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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 141

HILARY HALBERT, JR., DOROTHY HALBERT BUBBLE, MILDRED HALBERT, A MINOR, ETC., ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 142

RICH HALBERT, A MINOR, BY FRED P. HALBERT, GUARDIAN AD LITEM, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 143

VERNON SIDNEY HALBERT, A MINOR, BY BENJAMIN F. HALBERT, GUARDIAN AD LITEM, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 144

SIDNEY E. HALBERT, A MINOR, BY SIDNEY SETH HALBERT, GUARDIAN AD LITEM, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 145

ROSE PEERS PICKERNOLL, MABEL PEERS WHITE, AND AMELIA PEERS ALDEN, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 146

LULU M. ELLIOTT, SOPHIE M. ELLIOTT, CAROLYN M. ELLIOTT, ETC., ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 147

MARY BARICHIO PETIT AND NORRIS PETIT, ELLIS A. PETIT, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

(OVER)

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SUPREME COURT OF THE UNITED STATES

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THE UNITED STATES OF AMERICA

No. 145

ROSE PEERS PICKERNOLL, MABEL PEERS WHITE, AND AMELIA PEERS ALDEN, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 14, 1930

No. 146

LULU M. ELLIOTT, SOPHIE M. ELLIOTT, CAROLYN M. ELLIOTT, ETC., ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 147

MARY BARICHIO PETIT AND NORRIS PETIT, ELLIS A. PETIT, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 148

DEWEY BARICHIO AND LEDA E. BARICHIO, ROMIE D. BARICHIO, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 149

EDNA MAY ELLIOTT, RUTH G. ELLIOTT, WILLIAM H. ELLIOTT, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 150

CHAS. G. ELLIOTT, JR., ANNA MARIE ELLIOTT, HENRY ELLIOTT, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 151

AGNES RUBENS, LOUISE HENRY PETERSON, MARY HENRY HAGEN, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 152

VIRGINIA WALKOWSKY, ALVIN WALKOWSKY, CATHERINE WALKOWSKY, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 153

LIZZIE ROLFSON, ALVIN SMITH, EUGENE SMITH, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 154

MARY FRANCIS PROVOE, LAURA M. BROWN, FRANK M. PROVOE, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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NAMES AND ADDRESSES OF COUNSEL.

Mr. ANTHONY SAVAGE, 310 Federal Building, Seattle, Washington,

Solicitor for Appellant.

Mr. TOM DeWOLFE, 310 Federal Building, Seattle, Washington,

Solicitor for Appellant.

Mr. JOHN T. McCUTCHEON, 324 Federal Building, Tacoma, Washington,

Solicitor for Appellant.

Mr. JAMES T. RAHILY, Tacoma, Washington,

Associate Counsel.

Mr. STUART H. ELLIOTT, Tacoma, Washington,

Solicitor for Appellees.

Messrs. H. G. & DIX H. ROWLAND, Tacoma, Washington,

Solicitor for Appellees. [1]

In the United States District Court for the Western District of Washington, Southern Division.

No. 299-E.

HILARY HALBERT, Jr., DOROTHY HALBERT HUBBLE, and MILDRED HALBERT, a Minor, by HILARY HOUGHTON HALBERT, Guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

BILL OF COMPLAINT.

To the Honorable Judges of the Above Entitled Court: Sitting in Equity:

The plaintiffs complain of the defendant and for cause of action allege and say:

I.

That the plaintiffs are and at all times since their birth have been, Indians and members of the Quinaielt Tribe of Indians and at present reside in Grays Harbor County, State of Washington, and that the said Hilary Houghton Halbert was duly and in accordance with law appointed guardian ad litem of the plaintiff Mildred Halbert by the above entitled court upon the ——day of December, 1925, and he duly qualified as guardian ad litem and is now acting as such upon the behalf of said minor child, one of the plaintiffs herein.

II.

That the father of said plaintiffs as herein named is an Indian duly enrolled and allotted upon the Quinaielt Indian Reservation and is the head of a family consisting of himself, his wife, and said plaintiffs. [2]

III.

That the said Hilary Halbert, Jr., Dorothy Halbert Hubble and Mildred Halbert are the children of Hilary Houghton Halbert, Quinaielt Indian allottee No. 639. That by reason of this fact and the facts herein set forth relative to the selection and denial of certain allotments of land upon the Quinaielt Indian Reservation under respectively the same circumstances

and conditions these plaintiffs have a common interest in the subject matter of this action and are affected in a similar manner.

IV.

That the grounds upon which the court's jurisdiction depends are as follows: That the plaintiffs are Indians and members of the Quinaielt tribe of Indians, and that their father is duly enrolled and allotted upon the Quinaielt Indian Reservation. That the plaintiffs herein are entitled under the Treaty made and entered into between the United States and the Quinaielt Indians and other bands of Indians, and under the allotting acts of the United States, to an allotment of at least 80 acres, each, of land upon the Quinaielt Indian reservation in the State of Washington and within this district. The jurisdiction of the court further depends upon the Acts of August 15, 1894 (28 Stat. L. 305) and is amended by the Act of February 6, 1901 (31 Stat. L. 760) giving the right to Indians to bring suits against the United States to establish their rights to an allotment of land.

V.

That the father of said plaintiffs is allotted upon the Quinaielt Indian Reservation as No. 639; that said plaintiffs have the following named relatives allotted upon said reservation: their paternal grandmother, Lanie Ford Halbert, Quinaielt [3] allottee No. 638; their paternal uncle Fred P. Halbert, Quinaielt allottee No. 642; their paternal uncle Benjamin F. Halbert, Quinaielt allottee No. 641; their paternal uncle Sidney Seth Halbert, Quinaielt allottee No. 643; and their paternal uncle Ethan Ernest Halbert,

arbitrary and without reason and in no manner justified, and is a denial of a right of said plaintiffs as set [5] forth by the Acts of Congress of the United States, its laws and treaties, and a refusal to perform a duty of said defendant as set forth in said laws and treaties.

X.

That said allotments selected by plaintiffs herein are unallotted, unimproved, vacant Indian lands capable of being cleared and cultivated, duly surveyed by the United States Government and subject to selection and allotment under the law of the United States.

XI.

That notwithstanding all of the facts hereinbefore alleged the defendant, its officers and agents, have wrongfully failed, neglected and refused to allot the said lands to the plaintiffs herein, or to issue to said plaintiffs any trust or fee patents therefor, and have denied and excluded, and still deny and exclude, plaintiffs herein from said land, and have refused and still refuse to let said plaintiffs go upon or reside upon said lands or any portion thereof.

XII.

That said plaintiffs are entitled to have said lands so selected allotted to them, and desire that the same be allotted to them, and that their rights be recognized and that they be permitted to go upon, live upon, cultivate and improve said lands as their homes.

XIII.

That the plaintiffs waive answer under oath.

WHEREFORE, plaintiffs pray judgment as follows:

1. That a judgment and decree be entered herein as provided by law in favor of these claimants to said 80 acre tracts of land hereinbefore described, and that said decree be properly [6] certified by the Secretary of the Interior, and that the plaintiffs be awarded said lands as their allotments and that they be adjudged and decreed to have full right, power and authority to go upon, live upon, cultivate and improve said lands as their homes, in all respects as provided by law.

2. That the plaintiffs have all other and further relief as is equitable and just.

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Attorneys for Plaintiffs.

State of Washington,
County of Grays Harbor,—ss.

HILARY HOUGHTON HALBERT being first duly sworn upon oath deposes and says: That he is one of the plaintiffs in the above entitled action, and is the father and guardian ad litem of Mildred Halbert, a minor, plaintiff herein; that he has read the foregoing Bill of Complaint, knows the contents thereof, and that the same is true as he verily believes.

HILLORY HOUGHTON HALBERT.

Subscribed and sworn to before me this 8th day of December, 1925.

[Notary Seal] CHARLES W. HODGDON,
Notary Public in and for the State of Washington,
residing at Hoquiam, Wash.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Jul 19, 1926.

ED M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [7]

United States District Court, Western District of Washington, Southern Division.

No. 299-E.

HILARY HALBERT, Jr., DOROTHY HALBERT HUBBLE, and MILDRED HALBERT, a Minor, by HILARY *HUGHTON* HALBERT, Guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

AMENDED ANSWER.

Comes now the above named defendant by its attorney, and by way of amended answer to plaintiffs' bill of complaint, admits, denies and alleges as follows:

I.

Referring to paragraph I of plaintiffs' bill of complaint, defendant denies that the plaintiffs are members of the Quinaielt Tribe of Indians; defendant admits each and every other material allegation contained therein.

II.

Referring to paragraph II defendant admits that the father of said plaintiffs herein named, is an Indian duly named and enrolled and allotted upon the Quinaielt Indian Reservation, and denies each and every other material allegation contained therein. [8]

III.

Referring to paragraph III defendant admits that said HILARY HALBERT JR., DOROTHY HALBERT HUBBLE, and MILDRED HALBERT, a Minor, are the children of Hilary Houghton Halbert, A Quinaielt Indian Allottee No. 639, and denies each and every other material allegation contained therein.

IV.

Referring to paragraph IV defendant admits the jurisdiction of the above entitled court, and denies each and every other material allegation contained therein.

V.

Referring to paragraph V defendant admits the same.

VI.

Referring to paragraph V*i* defendant admits that the father of the plaintiffs and the plaintiffs were

born and have lived in Gray's Harbor County, Washington, and denies each and every material allegation contained therein.

VII.

Referring to paragraph VII and VIII defendant admits the same.

VIII.

Referring to paragraph IX defendant denies each and every material allegation contained therein.

IX.

Referring to paragraph X defendant admits the same.

X.

Referring to paragraph XI defendant admits that he has refused to allot certain lands to the plaintiffs herein, but denies that said refusal was wrong. [9]

XI.

Referring to paragraph XII defendant denies the same.

WHEREFORE, having answered plaintiffs' bill of complaint, defendant prays that said action be dismissed, and that it have and recover its costs herein.

THOS. P. REVILLE,
United States Attorney.

DAVID SPAULDING,
Assistant United States Attorney.

United States of America,
Western District of Washington,
Southern Division,—ss.

DAVID L. SPAULDING, being first duly sworn, on oath deposes and says: That he is an Assistant United States Attorney for the Western District of Washington, and makes this verification for and on behalf of the United States of America, defendant herein; that he has read the foregoing Amended Answer; knows the contents thereof and believes the same to be true.

DAVID L. SPAULDING.

Subscribed and sworn to before me this 5th day of Nov. 1927.

[Seal] ALINE ESLER,
Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Nov. 9, 1927.

ED. M. LAKIN,
Clerk.
By E. R.,
Deputy. [10]

In the United States District Court for the Western District of Washington, Southern Division.

No. 299-E.

HILARY HALBERT, Jr., DOROTHY HALBERT HUBBLE, and MILDRED HALBERT, a Minor, by HILARY HOUGHTON HALBERT, Guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

DECREE.

This cause came on to be heard at this term, the plaintiffs Hilary Halbert, Jr., Dorothy Halbert Hubble, and Mildred Halbert, a Minor, by Hilary Houghton Halbert, Guardian ad litem, appearing by their counsel Stuart H. Elliott and H. G. & Dix H. Rowland, and the defendant appearing by its counsel Anthony Savage, U. S. District Attorney, Seattle, Wash., David Spaulding, Asst. U. S. Dist. Attorney, Seattle, Wash., John T. McCutchoon, Asst. U. S. Dist. Attorney, Tacoma, James T. Rahily, Associate Counsel, Washington, D. C.; and the court having taken the matter under advisement and rendered his memorandum decision herein after said cause had been submitted to the court upon written briefs, and thereupon upon consideration thereof it is

ORDERED, ADJUDGED AND DECREED:

That plaintiffs Hilary Halbert, Jr., Dorothy Halbert Hubble and Mildred Halbert, a Minor, be and

they are hereby entitled to the lands heretofore selected by them situate upon the Quinaielt Indian Reservation, within this district [11] in Grays Harbor County, in the State of Washington, to-wit:

Hilary Halbert, Jr.,—N½ of NE¼, Sec. 8, Twp. 23, N. R., 11 W., W. M.

Dorothy Halbert (Hubble)—E½ of SE¼, Sec. 5, Twp. 23, N. R. 11 W., W. M.

Mildred Halbert—SE¼ of SW¼ and SW¼ of SE¼ Sec. 5 Twp. 23 N R 11 W. W. M.

as allotments to be held and owned by each of said plaintiffs respectively, in all respects as provided by law.

It is FURTHER ORDERED, ADJUDGED and DECREED that the defendant, its officers and agents, be and they are hereby ordered and directed to issue to said plaintiffs, certificates of allotment of said lands heretofore described, said certificates of allotment to be in effect and to award to said plaintiffs all of the rights to which said plaintiffs are entitled under and by virtue of the laws of the United States.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents and all persons claiming by, through or under them, be and they are hereby forever barred and estopped from ever claiming or asserting that said plaintiffs, their heirs, executors, administrators and assigns, are not entitled to said lands as and for their allotments, with full right to use, build upon, clear, improve, and occupy the same, in all respects as provided by law, to all of which the defendant excepts and its exception is allowed.

Done in open court this 24th day of December, A. D. 1928.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: O. K. as to form.

D. L. SPAULDING,
Asst. U. S. Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 24, 1928.

ED. M. LAKIN,
Clerk.

By E. Redmayne. [12]

United States District Court, Western District of Washington, Southern Division.

No. 299-E

HILARY HALBERT, JR., et al,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

ASSIGNMENTS OF ERROR.

Comes now the above named defendant, the United States of America, by and through its attorneys, Anthony Savage, United States Attorney for the Western District of Washington, and John T. McCutcheon and Tom DeWolfe, Assistant United States Attorneys for said District, and James T. Ruhily,

Associate Counsel, and respectfully submits the following Assignments of Error upon which it relies in support of its appeal from the judgment and decree entered on the 24th day of December, 1928, in said cause, in the District Court of the United States for the Southern Division of the Western District of Washington, and under which Assignments of Error said appellant seeks reversal of the decision, judgment and decree of said Court:

I.

That the District Court erred in holding and finding that the land selected for allotment by the plaintiffs was subject to selection and allotment under the laws of the United States, and that the plaintiffs are lawfully entitled to have such land allotted to them.

II.

That the District Court erred in holding and finding that the officers and agents of the United States of America have wrongfully failed, neglected and refused to allot the said land to the said plaintiffs, or to issue to [15] the plaintiffs any trust or fee patent therefor.

III.

That the District Court erred in adjudging that the plaintiffs were entitled to a decree adjudging and decreeing that the said plaintiffs are entitled to the land selected for their allotment, and that the plaintiffs are entitled to have said land allotted to them by the defendant, its officers and agents.

IV.

That the District Court erred in concluding, holding, and finding that the plaintiffs are entitled to a decree estopping the defendant, its officers and agents from hereafter interfering with the plaintiffs in their rights to possession of said lands and their rights to improve the same, and estopping the defendant from hereafter claiming or asserting that said plaintiffs are not entitled to go upon, clear, improve, and build upon said land.

V.

That the District Court erred in holding and finding that the general allotment statutes and acts do not apply and that the Act of March 4, 1911, is a special allotment act, when said act of March 4, 1911, expressly provides that allotments are made under the provisions of the allotment laws of the United States.

VI.

That the District Court erred in holding and finding that the Indian tribes who refused to become parties to the Treaty of July 1, 1855, and January 23, 1856, were affiliated therein with the Indian tribes that did participate in said Treaty and actually agreed to the same and signed the same. [16]

VII.

That the District Court erred in holding and finding that the decision and action of the Indian Council of 1922 as to recognition and adoption of members was in itself authoritative, notwithstanding the fact that said proceedings of said Council were in no part

approved by the Secretary of the Interior of the United States of America.

VIII.

That the District Court erred in holding and finding that under the Act of June 7, 1897, where an Indian woman who was recognized tribally at that time and married to a white husband has children, that the offspring of said children are entitled to receive allotments under the law.

IX.

That the District Court erred in holding and finding that the rights of children of a white man and an Indian woman in tribal property embraces the children of the mother who was living at the time of the passage of the Act of June 7, 1897, and was not then recognized by the tribe as one of its *member*.

X.

That the District Court erred in holding and finding that the plaintiffs and their parents had been properly adopted into the Quinaielt tribe by the adoption action of the Indian Council of said tribe in 1912 when said action was void for not having been approved by the Secretary of the Interior of the United States.

XI.

That the District Court erred in holding and finding that the plaintiffs who were born of a marriage prior to 1897 between a white man and a woman of Indian blood who was living on June 7, 1897, and not then recognized as a [17] member by the tribal

Indians of the Quinaielt Reservation were entitled to allotments thereon.

XII.

That the District Court erred in entering decree herein on December 24, 1928, awarding allotments to the plaintiffs herein when the evidence adduced at the time of trial herein was insufficient to sustain said decree and exceptions to said decree having been timely noted.

XIII.

That the District Court erred in holding and decreeing that the defendant, its officers and agents are directed to issue to the plaintiffs, certificates of allotment of the lands claimed to be selected by said plaintiffs.

ANTHONY SAVAGE,
United States Attorney.

JOHN T. McCUTCHEON,
Assistant United States Attorney.

TOM DeWOLFE,
Assistant United States Attorney.

[Endorsed]: Received a copy of the within Assignments this 19th day of March 1929.

STUART H. ELLIOTT,
and
H. G. & DIX ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District

Court, Western District of Washington, Southern Division, Mar. 20, 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [18]

United States District Court Western District of Washington, *Northern* Division.

No. 299-E.

HILARY HALBERT, JR., et al,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

ORDER ALLOWING APPEAL.

On the application of the defendant herein it is hereby ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and Decree heretofore entered and filed herein on the 24th day of December, 1928, be and the same is hereby allowed.

It is hereby ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

DONE IN OPEN COURT this 20th day of March, 1929.

J. STANLEY WEBSTER,
United States District Judge.

[Endorsed]: Received a copy of the within order this 20th day of March 1929.

STUART H. ELLIOTT
and
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar 20 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [19]

In the United States District Court for the Western District of Washington, Southern Division.

No. 300-E.

RICH HALBERT, a Minor, by FRED F. HALBERT, Guardian ad litem,
Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

BILL OF COMPLAINT.

To the Honorable Judges of the Above Entitled Court: Sitting in Equity:—

The plaintiff complains of the defendant and for cause of action alleges and says:

I.

That the plaintiff is and at all times since his birth has been an Indian and a member of the Quinaielt Tribe of Indians and at present resides with his father Fred P. Halbert in Grays Harbor County, State of Washington, and that the said Fred P. Halbert was duly and in accordance with law appointed guardian ad litem of the plaintiff by the above entitled court upon the —— day of December, 1925, and he duly qualified as guardian ad litem and is now acting as such upon the behalf of the minor child, plaintiff herein.

II.

That the father and guardian ad litem of said plaintiff as herein named is an Indian duly enrolled and allotted upon the Quinaielt Indian Reservation and is the head of a family consisting of himself, his wife, and said plaintiff, and have lived for many years and now live upon the Quinaielt Reservation within this District. [20]

III.

That the grounds upon which the court's jurisdiction depends are as follows: That the plaintiff is an Indian and a member of the Quinaielt tribe of Indians, and that his father is duly enrolled and allotted upon the Quinaielt Indian Reservation. That the plaintiff herein is entitled under the Treaty made and entered into between the United States and the Quinaielt Indians and other bands of Indians, and under the allotting acts of the United States, to an allotment of at least 80 acres of land upon the Quin-

aielt Indian reservation in the State of Washington and within this district. The jurisdiction of the court further depends upon the Acts of August 15, 1894 (28 Stat. L. 305) and is amended by the Act of February 6, 1901 (31 Stat. L. 760) giving the right to Indians to bring suits against the United States to establish their rights to an allotment of land.

IV.

That the father and guardian ad litem of said plaintiff is allotted upon the Quinaielt Indian Reservation as No. 642; that said plaintiff has the following named relatives allotted upon said reservation: his paternal grandmother Lanie Ford Halbert, Quinaielt allottee No. 638; his paternal uncle Benjamin F. Halbert, Quinaielt allottee No. 641; his paternal uncle Sidney Seth Halbert, Quinaielt allottee No. 643; his paternal uncle *Hillary* Houghton Halbert, Quinaielt allottee No. 639; and his paternal uncle Ethan Ernest Halbert, Quinaielt allottee No. 640; and other persons more distantly related to the plaintiff.

V.

That the father and guardian ad litem of the plaintiff, and the plaintiff, were born in Grays Harbor County, Washington, and have lived for many years, and now live, upon the Quinaielt Indian reservation in said county, within this district, and [21] have lived and associated and affiliated with the Quinaielt Indians during that entire period.

VI.

That on or about November 30, 1923, the father of plaintiff herein duly applied to the defendant for an allotment of land for his minor child, plaintiff herein, and with the assistance and approval of the defendant's agent, the superintendent of the Taholah Indian Agency, made the following selection of land for said minor child, plaintiff herein, towit:—

The south half of the northeast quarter of Section 8, Township 23 North, Range 11 West, W. M.

That later the Superintendent of the Taholah Indian Agency, the defendant's agent herein, returned the aforesaid selection for allotment to the father and guardian ad litem of the plaintiff herein and denied the said plaintiff the identical allotment of land or any selection or allotment of land upon the Quinaielt Indian reservation whatsoever.

VII.

That thereafter and about six months ago a Special Alloting agent was sent by the defendant, more particularly the Secretary of the Initerior, to the said Quinaielt Indian reservation for the purpose of alloting lands thereon to Indians entitled thereto, and the guardian ad litem of said plaintiff thereupon in due course and in accordance with law presented the above selection of land to the special alloting agent so that the same might be allowed to said minor child.

VIII.

That thereafter, plaintiff is informed and believes, said selection was regularly forwarded to the Secretary of the Interior at Washington, D. C. in accord-

ance with law, and each and [22] every step was regularly completed for the actual approval and granting of said allotment and the issuance of the necessary patent therefor except only the approval of the Secretary of the Interior. That subsequently the defendant, more particularly the Secretary of the Interior, neglected, refused and declined to allot to said plaintiff the identical allotment herein described, or any allotment of land upon the Quinaielt Reservation whatsoever, and the defendant by its officers and agents, more particularly the Commissioner of Indian Affairs, the Superintendent of the Quinaielt Indian Agency, and the Special Alloting Agent, returned said selection of allotment to the plaintiff denying him the right to an allotment upon said Quinaielt Indian reservation. That said denial and refusal of plaintiff's rights to an allotment was for no reason known to plaintiff, but that such refusal and denial is arbitrary and without reason and in no manner justified, and is a denial of a right of said plaintiff as set forth by the Acts of Congress of the United States, its laws and treaties, and a refusal to perform a duty of said defendant as set forth in said laws and treaties.

IX.

That said allotment selected by plaintiff herein is unallotted, unimproved, vacant Indian lands capable of being cleared and cultivated, duly surveyed by the United States Government and subject to selection and allotment under the laws of the United States.

X.

That notwithstanding all of the facts hereinbefore alleged the defendant, its officers and agents, have

wrongfully failed, neglected and refused to allot the said land to the plaintiff herein, or to issue to said plaintiff any trust or fee patent [23] therefor, and have denied and excluded, and still deny and exclude, plaintiff herein from said land and have refused and still refuse to let said plaintiff go upon or reside upon said land or any portion thereof.

XI.

That said plaintiff is entitled to have said land so selected allotted to him, and desires that the same be allotted to him, and that his rights be recognized and that he be permitted to go upon, live upon, cultivate and improve said land as his home.

XII.

That the plaintiff waives answer under oath.

WHEREFORE, plaintiff prays judgment as follows:

1. That a judgment and decree be entered herein as provided by law in favor of this claimant to said 80 acre tract of land hereinbefore described, and that said decree be properly certified by the Secretary of the Interior, and that the plaintiff be awarded said land as his allotment and that he be adjudged and decreed to have full right, power and authority to go upon, live upon, cultivate and improve said land as his home, in all respects as provided by law.

2. That the plaintiff have all other and further relief as is equitable and just.

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Attorneys for plaintiff. [24]

State of Washington,
County of Grays Harbor,—ss.

FRED P. HALBERT being first duly sworn upon oath deposes and says: That he is the father and the guardian ad litem of the plaintiff in the above entitled action; that he has read the foregoing Bill of Complaint, knows the contents thereof, and that the same is true as he verily believes.

FRED P. HALBERT.

Subscribed and sworn to before me this 12 day of December, 1925.

[Notary Seal] CHAS. THOMAS,
Notary Public in and for the State of Washington, residing at *Quinault*.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Jul 19, 1926.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [25]

United States District Court, Western District of Washington, Southern Division.

No. 300-E.

RICH HALBERT, a Minor, by FRED P. HALBERT, Guardian ad litem,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

AMENDED ANSWER.

Comes now the above named defendant by its attorney, and by way of amended answer to plaintiff's bill of complaint, admits, denies and alleges as follows:

I.

Referring to paragraph I of plaintiff's bill of complaint, defendant denies that plaintiffs are members of the Quinaielt Tribe of Indians and admits each and every other material allegation contained therein.

II.

Referring to paragraph II defendant admits that the father and guardian ad litem of said plaintiff is an Indian duly enrolled and allotted upon the Quinaielt Indian Reservation; and defendant denies each and every other material allegation contained therein.

III.

Referring to paragraph III defendant admits the jurisdiction of the above entitled court and denies

each and every other material allegation contained therein. [26]

IV.

Referring to paragraph IV. defendant admits the same.

V.

Referring to paragraph V defendant admits that the plaintiff was born in Gray's Harbor County Washington and denies each and every other material allegation contained therein.

VI.

Referring to paragraph VI and VII defendant admits the same.

VII.

Referring to paragraph VIII defendant admits that it has refused to allot land upon the Quinaielt Reservation to the plaintiff herein and denies each and every other material allegation contained therein.

VIII.

Referring to paragraph IX, defendant admits the same.

IX.

Referring to paragraph X, defendant admits that it has refused to allot lands to the plaintiff herein but denies that said refusal was wrongful.

XI.

Referring to paragraph XI defendant denies the same.

WHEREFORE, having answered plaintiffs' bill of complaint, defendant prays that said action be dismissed, and that it have and recover its costs herein.

THOS P. REVELLE,
United States Attorney.

DAVID L. SPAULDING,
Assistant United States Attorney. [27]

United States of America,
Western District of Washington,
Southern Division,—ss.

DAVID L. SPAULDING, being first duly sworn, on oath deposes and says: That he is an Assistant United States Attorney for the Western District of Washington, and makes this verification for and on behalf of the United States of America, defendant herein; that he has read the foregoing Amended Answer; knows the contents thereof and believes the same to be true.

DAVID L. SPAULDING.

Subscribed and sworn to before me this 5th day of November, 1927.

[Seal] S. E. LEITCH,
Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Nov. 11, 1927.

ED. M. LAKIN,
Clerk.
By E. R.,
Deputy. [28]

In the United States District Court for the Western District of Washington, Southern Division.

No. 300-E.

RICH HALBERT, a Minor, by FRED P. HALBERT, Guardian ad litem,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

DECREE.

This cause came on to be heard at this term, the plaintiff Rich Halbert, a minor, by Fred P. Halbert, Guardian ad litem, appearing by his counsel Stuart H. Elliott and H. G. & Dix H. Rowland, and the defendant appearing by its counsel Anthony Savage, U. S. District Attorney Seattle, Wash., David Spaulding, Asst. U. S. District Attorney, Seattle, Wash., John T. McCutcheon, Asst U. S. District Attorney, Tacoma, Jamet T. Rahily, Associate Counsel, Washington, D. C.; and the court having taken the matter under advisement and rendered his memorandum decision herein after said cause had been submitted to the court upon written briefs, and thereupon upon consideration thereof it is

ORDERED, ADJUDGED AND DECREED:

That plaintiff Rich Halbert, a minor, be and he is hereby entitled to the land heretofore selected by him situate upon the *Quianielt* Indian Reservation within this District, in Grays Harbor County, in the State of Washington, to-wit:

The east half of the northeast quarter of Section Nine (9), Township Twenty-three (23) North, Range Eleven (11) West, Willamette Meridian. [29]

as an allotment to be held and owned by said plaintiff in all respects as provided by law.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents, be and they are hereby ordered and directed to issue to said plaintiff, certificate of allotment of said lands heretofore described, said certificate of allotment to be in effect and to award to said plaintiff all of the rights to which said plaintiff is entitled under and by virtue of the laws of the United States.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents and all persons claiming by, through or under them, be and they are hereby forever barred and estopped from ever claiming or asserting that said plaintiff, his heirs, executors, administrators and assigns, are not entitled to said lands as and for their allotments, with full right to use, build upon, clear, improve, and occupy the same, in all respects as provided by law, to all of which defendant excepts and its exception is allowed.

Done in open court this 24th day of December, A. D. 1928.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: O. K. as to form.

D. SPAULDING,
Asst. U. S. Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 24 1928.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [30]

United States District Court, Western District of Washington, Southern Division.

No. 300-E.

RICH HALBERT, etc.,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

ASSIGNMENTS OF ERROR.

Comes now the above named defendant, the United States of America, by and through its attorneys, Anthony Savage, United States Attorney for the Western District of Washington, and John T. McCutcheon and Tom DeWolfe, Assistant United States Attorneys for said District, and James T. Rahily, Associate Counsel, and respectfully submits the following Assignments of Error upon which it relies in support of its appeal from the judgment and decree entered on the 24th day of December, 1928, in said cause, in the District Court of the United States for the Southern Division of the Western District of Wash-

ington, and under which Assignments of Error said appellant seeks reversal of the decision, judgment and decree of said Court:

I.

That the District Court erred in holding and finding that the land selected for allotment by the plaintiff was subject to selection and allotment under the laws of the United States, and that the plaintiff is lawfully entitled to have such land allotted to him.

II.

That the District Court erred in holding and finding that the officers and agents of the United States of America have wrongfully failed, neglected and refused to allot the said land to the said plaintiff, or to issue to the plaintiff any trust or fee patent therefor. [33]

III.

That the District Court erred in adjudging that the plaintiff was entitled to a decree adjudging and decreeing that the said plaintiff is entitled to the land selected for his allotment, and that the plaintiff is entitled to have said land allotted to him by the defendant, its officers and agents.

IV.

That the District Court erred in concluding, holding, and finding that the plaintiff is entitled to a decree estopping the defendant, its officers and agents from hereafter interfering with the plaintiff in his rights to possession of said land and his rights to improve the same, and estopping the defendant from

hereafter claiming or asserting that said plaintiff is not entitled to go upon, clear, improve, and build upon said land.

V.

That the District Court erred in holding and finding that the general allotment statutes and acts do not apply and that the Act of March 4, 1911, is a special allotment act, when said Act of March 4, 1911, expressly provides that allotments are made under the provisions of the allotment laws of the United States.

VI.

That the District Court erred in holding and finding that the Indian tribes who refused to become parties to the Treaty of July 1, 1855, and January 23, 1856, were affiliated therein with the Indian tribes that did participate in said Treaty and actually agreed to the same and signed the same. [34]

VII.

That the District Court erred in holding and finding that the decision and action of the Indian Council of 1922 as to recognition and adoption of members was in itself authoritative, notwithstanding the fact that said proceedings of said Council were in no part approved by the Secretary of the Interior of the United States of America.

VIII.

That the District Court erred in holding and finding that under the Act of June 7, 1897, where an Indian woman who was recognized tribally at that

time and married to a white husband has children, that the offspring of said children are entitled to receive allotments under the law.

IX.

That the District Court erred in holding and finding that the rights of children of a white man and an Indian woman in tribal property embraces the children of the mother who was living at the time of the passage of the Act of June 7, 1897, and was not then recognized by the tribe as one of its members.

X.

That the District Court erred in holding and finding that the plaintiff and his parents had been properly adopted into the Quinaielt tribe by the adoption action of the Indian Council of said tribe in 1912 when said action was void for not having been approved by the Secretary of the Interior of the United States.

XI.

That the District Court erred in holding and finding that the plaintiff who was born of a marriage prior to 1897 between a white man and a woman of Indian blood who was living on June 7, 1897, and not then recognized as a [34A] member of the tribal Indians of the Quinaielt Reservation was entitled to allotment thereon.

XII.

That the District Court erred in entering decree herein on December 24, 1928, awarding allotments

to the plaintiff herein when the evidence adduced at the time of trial herein was insufficient to sustain said decree and exceptions to said decree having been timely noted.

XIII.

That the District Court erred in holding and decreeing that the defendant, its officers and agents, are directed to issue to the plaintiff, certificate of allotment of the land claimed to be selected by said plaintiff.

ANTHONY SAVAGE,
United States Attorney.

JOHN T. McCUTCHEON,
Assistant United States Attorney.

TOM DeWOLFE,
Assistant United States Attorney.

[Endorsed]: Received a copy of the within Assignments this 19th day of March, 1929.

STUART H. ELLIOTT
and
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Mar 20 1929.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [35]

United States District Court, Western District of Washington, Southern Division.

No. 300-E.

RICHARD HALBERT,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER ALLOWING APPEAL.

On the application of the defendant herein, it is hereby ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and decree heretofore entered and filed herein on the 24th day of December, 1928, be and the same is hereby allowed.

It is further ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

DONE IN OPEN COURT this 20th day of March, 1929.

J. STANLEY WEBSTER,
United States District Judge.

[Endorsed]: Received a copy of the within Order this 20th day of March 1929.

STUART H. ELLIOTT,
and
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar. 20, 1929.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [36]

In the United States District Court for the Western District of Washington, Southern Division.

No. 301-E.

VERNON SIDNEY HALBERT, a Minor, by BENJAMIN F. HALBERT, Guardian ad litem,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

BILL OF COMPLAINT.

To the Honorable Judges of the Above Entitled Court: Sitting in Equity:

The plaintiff complains of the defendant and for cause of action alleges and says:—

I.

That the plaintiff is and at all times since his birth has been an Indian and a member of the Quinaielt Tribe of Indians and at present resides with his father Benjamin F. Halbert in Grays Har-

bor County, State of Washington, and that the said Benjamin F. Halbert was duly and in accordance with law appointed guardian ad litem of the plaintiff by the above entitled court upon the —— day of December, 1925, and he duly qualified as guardian ad litem and is now acting as such upon the behalf of the minor child, plaintiff herein.

II.

That the father and guardian ad litem of said plaintiff as herein named is an Indian duly enrolled and allotted upon the Quinaielt Indian Reservation and is the head of a family consisting of himself, his wife, and said plaintiff. [37]

III.

That the grounds upon which the court's jurisdiction depends are as follows: That the plaintiff is an Indian and a member of the Quinaielt tribe of Indians, and that his father is duly enrolled and allotted upon the Quinaielt Indian Reservation. That the plaintiff herein is entitled under the Treaty made and entered into between the United States and the Quinaielt Indians and other bands of Indians, and under the allotting acts of the United States, to an allotment of at least 80 acres of land upon the Quinaielt Indian reservation in the State of Washington and within this district. The jurisdiction of the court further depends upon the Acts of August 15, 1894 (28 Stat. L. 305) and is amended by the Act of February 6, 1901 (31 Stat. L. 760) giving the right to Indians to bring suits against the United States to establish their rights to an allotment of land.

IV.

That the father and guardian ad litem of said plaintiff is allotted upon the Quinaielt Indian Reservation as No. 641; that said plaintiff has the following named relatives allotted upon said reservation: his paternal grandmother Lanie Ford Halbert, Quinaielt allottee No. 638; his paternal uncle Fred P. Halbert, Quinaielt allottee No. 642; his paternal uncle Sidney Seth Halbert, Quinaielt *allotee* No. 643; his paternal uncle *Hillary* Houghton Halbert, Quinaielt allottee No. 639; and his paternal uncle Ethan Ernest Halbert, Quinaielt allottee No. 640; and other persons more distantly related to the plaintiff.

V.

That the father and guardian ad litem of the plaintiff, and the plaintiff, were born and have lived all their lives, and now live, in Grays Harbor County, Washington, within this District, and have lived and associated and affiliated with the [38] Quinaielt Indians during that entire period.

VI.

That on or about November 30, 1923, the father of plaintiff herein duly applied to the defendant for an allotment of land for his minor child, plaintiff herein, and with the assistance and approval of the defendant's agent, the superintendent of the Taholah Indian Agency, made the following selection of land for said minor child, plaintiff herein, towit:—

The north half of the southwest quarter of Section 5, Township 23 North, Range 11 West, W. M.

That later the Superintendent of the Taholah Indian Agency, the defendant's agent herein, returned the aforesaid selection for allotment to the father and guardian ad litem of the plaintiff herein and denied the said plaintiff the identical allotment of land or any selection or allotment of land upon the Quinaielt Indian reservation whatsoever.

VII.

That thereafter and about six months ago a Special Alloting agent was sent by the defendant, more particularly the Secretary of the Interior, to the said Quinaielt Indian reservation for the purpose of alloting lands thereon to Indians entitled thereto, and the guardian ad litem of said plaintiff thereupon in due course and in accordance with law presented the above selection of land to the special alloting agent so that the same might be allotted to said minor child.

VIII.

That thereafter, plaintiff is informed and believes, said selection was regularly forwarded to the Secretary of the Interior at Washington, D. C., in accordance with law, and each and every step was regularly completed for the actual approval and [39] granting of said allotment and the issuance of the necessary patent therefor except only the approval of the Secretary of the Interior. That subsequently the defendant, more particularly the Secretary of the Interior, neglected, refused and declined to allot to said plaintiff the identical allotment herein described, or any allotment of land upon the Quin-

aielt Reservation whatsoever, and the defendant by its officers and agents, more particularly the Commissioner of Indian Affairs, the Superintendent of the Quinaielt Indian Agency, and the Special Alloting Agent, returned said selection of allotment to the plaintiff denying him the right to an allotment upon said Quinaielt Indian Reservation. That said denial and refusal of plaintiff's rights to an allotment was for no reason known to plaintiff, but that such refusal and denial is arbitrary and without reason and in no manner justified, and is a denial of a right of said plaintiff as set forth by the Acts of Congress of the United States, its laws and treaties, and a refusal to perform a duty of said defendant as set forth in said laws and treaties.

IX.

That said allotment selected by plaintiff herein is unallotted, unimproved, vacant Indian lands capable of being cleared and cultivated, duly surveyed by the United States Government and subject to selection and allotment under the law of the United States.

X.

That notwithstanding all of the facts hereinbefore alleged the defendant, its officers and agents, have wrongfully failed, neglected and refused to allot the said land to the plaintiff herein, or to issue to said plaintiff any trust or [40] fee patent therefor, and have denied and excluded, and still deny and exclude, plaintiff herein from said land and have refused and still refuse to let said plaintiff go upon or reside upon said land or any portion thereof.

XI.

That said plaintiff is entitled to have said land so selected allotted to him, and desires that the same be allotted to him, and that his rights be recognized and that he be permitted to go upon, live upon, cultivate and improve said land as his home.

XII.

That the plaintiff waives answer under oath.

WHEREFORE, plaintiff prays judgment as follows:—

1. That a judgment and decree be entered herein as provided by law in favor of this claimant to said 80 acre tract of land hereinbefore described, and that said decree be properly certified by the Secretary of the Interior, and that the plaintiff be awarded said land as his allotment and that he be adjudged and decreed to have full right, power and authority to go upon, live upon, cultivate and improve said land as his home, in all respects as provided by law.

2. That the plaintiff have all other and further relief as is equitable and just.

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Attorneys for plaintiff. [41]

State of Washington,
County of Grays Harbor,—ss.

BENJAMIN F. HALBERT being first duly sworn upon oath deposes and says: That he is the father and the guardian ad litem of the plaintiff in the above entitled action; that he has read the fore-

going Bill of Complaint, knows the contents thereof, and that the same is true as he verily believes.

BENJAMIN F. HALBERT.

Subscribed and sworn to before me this 5th day of December, 1925.

[Notary Seal] JOHN D. EHRHART,
Notary Public in and for the State of Washington, residing at Hoquiam.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Jul 19, 1926.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [42]

United States District Court, Western District of Washington, Southern Division.

No. 301-E.

VERNON SIDNEY HALBERT, a Minor, by BENJAMIN F. HALBERT, Guardian ad litem,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

AMENDED ANSWER.

Comes now the above named defendant by its attorney, and by way of amended answer to plaintiff's

bill of complaint, admits, denies and alleges as follows:

I.

Referring to paragraph I of the plaintiff's bill of complaint, defendant denies that plaintiff is a member of the Quinaielt Tribe of Indians, and admits each and every other material allegation contained therein.

II.

Referring to paragraph II defendant admits that the father and guardian ad litem of said plaintiff is duly enrolled and allotted upon the Quinaielt Reservation, and denies each and every other material allegation contained therein.

III.

Referring to paragraph III defendant admits the jurisdiction of the above entitled court and denies each and every other material allegation contained therein.

IV.

Referring to paragraph IV defendant admits the same. [43]

V.

Referring to paragraph V defendant admits that the plaintiff was born in *Gray's* Harbor County, Washington, and denies each and every other material allegation contained therein.

VI.

Referring to paragraph VI the defendant admits the same.

VII.

Referring to paragraph VIII defendant admits that it has refused to allot land to said plaintiff and denies each and every other material allegation contained therein.

VIII.

Referring to paragraph IX defendant admits the same.

IX.

Referring to paragraph X defendant admits that it has refused to allot lands to the plaintiff, but denies that said refusal was wrongful.

X.

Referring to paragraph XI defendant denies the same.

WHEREFORE, having answered plaintiff's bill of complaint, defendant prays that said action be dismissed, and that it have and recover its costs herein.

THOS P. REVELLE,
United States Attorney,

DAVID L. SPAULDING,
Assistant United States Attorney. [44]

United States of America,
Western District of Washington,
Southern Division,—ss.

DAVID L. SPAULDING, being first duly sworn, on oath deposes and says: That he is an Assistant United States Attorney for the Western District of Washington, and makes this verification for and on

behalf of the United States of America, defendant herein; that he has read the foregoing amended Answer; knows the contents thereof and believes the same to be true.

DAVID L. SPAULDING.

Subscribed and sworn to before me this 10th day of November, 1927.

[Seal] S. M. H. COOK,
Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Nov. 11, 1927.

ED. M. LAKIN,
Clerk.
By E. R.,
Deputy. [45]

In the United States District Court for the Western District of Washington, Southern Division.

No. 301-E.

VERNON SIDNEY HALBERT, a Minor, by BENJAMIN F. HALBERT, Guardian ad litem,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

DECREE.

This cause came on to be heard at this term, the plaintiff Vernon Sidney Halbert, a Minor, by Ben-

jamin F. Halbert, Guardian ad litem, appearing by his counsel Stuart H. Elliott and H. G. & Dix H. Rowland, and the defendant appearing by its counsel Anthony Savage, U. S. District Attorney, Seattle, Wash., David Spaulding, Asst. U. S. Dist. Attorney, Seattle, Wash., John T. McCutcheon, Asst. U. S. Dist. Attorney, Tacoma, James T. Rahily, Associate Counsel, Washington, D. C.; and the court having taken the matter under advisement and rendered his memorandum decision herein after said cause had been submitted to the court upon written briefs, and thereupon upon consideration thereof it is

ORDERED, ADJUDGED AND DECREED; That plaintiff Vernon Sidney Halbert, a minor, be and he is hereby entitled to the lands heretofore selected by him situate upon the Quinaielt Indian Reservation within this District, in Grays Harbor County, in the State of Washington, to-wit: The north half of the southwest quarter of Section 5, Township 23 North, Range 11 West, W. M. [46] as an allotment to be held and owned by said plaintiff in all respects as provided by law.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents, be and they are hereby ordered and directed to issue to said plaintiff, certificate of allotment of said lands heretofore described, said certificate of allotment to be in effect and to award to said plaintiff all of the rights to which said plaintiff is entitled under and by virtue of the laws of the United States.

It is FURTHER ORDERED, ADJUDGED

AND DECREED that the defendant, its officers and agents and all persons claiming by, through or under them, be and they are hereby forever barred and estopped from ever claiming or asserting that said plaintiff, his heirs, executors, administrators and assigns, are not entitled to said lands as and for their allotments, with full right to use, build upon, clear, improve, and occupy the same, in all respects as provided by law, to all of which defendant excepts and its exception is allowed.

DONE in open court this 24th day of December A. D. 1928.

EDWARD E. CUSHMAN,
Judge.

O. K. as to form.

D. SPAULDING,
Asst. U. S. Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 24, 1928.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [47]

United States District Court, Western District of Washington, Southern Division.

No. 301-E

VERNON SIDNEY HALBERT, etc.,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ASSIGNMENT OF ERRORS.

Comes now the above named defendant, the United States of America, by and through its attorneys, Anthony Savage, United States Attorney for the Western District of Washington, and John T. McCutcheon and Tom DeWolfe, Assistant United States Attorneys for said District, and James T. Rahily, Associate Counsel, and respectfully submits the following Assignments of Errors upon which it relies in support of its appeal from the judgment and decree entered on the 24th day of December, 1928, in said cause, in the District Court of the United States for the Southern Division of the Western District of Washington, and under which Assignments of Error said appellant seeks reversal of the decision, judgment and decree of said Court.

I.

That the District Court erred in holding and finding that the land selected for allotment by the plaintiff was subject to selection and allotment under the laws of the United States, and that the plaintiff is lawfully entitled to have such land allotted to him.

II.

That the District Court erred in holding and finding that the officers and agents of the United States of America have wrongfully failed, neglected and refused to allot the said land to the said plaintiff, or to issue to the plaintiff any trust or fee patent therefor. [50].

III.

That the District Court erred in adjudging that the plaintiff was entitled to a decree adjudging and decreeing that the said plaintiff is entitled to the land selected for his allotment, and that the plaintiff is entitled to have said land allotted to him by the defendant, its officers and agents.

IV.

That the District Court erred in concluding, holding, and finding that the plaintiff is entitled to a decree estopping the defendant, its officers and agents, from hereafter interfering with the plaintiff in his right to possession of said land and his right to improve the same, and estopping the defendant from hereafter claiming or asserting that said plaintiff is not entitled to go upon, clear, improve, and build upon said land.

V.

That the District Court erred in holding and finding that the general allotment statutes and acts do not apply and that the Act of March 4, 1911, is a special allotment act, when said Act of March 4, 1911, expressly provides that allotments are made under the provisions of the allotment laws of the United States.

VI.

That the District Court erred in holding and finding that the Indian tribes who refused to become parties to the Treaty of July 1, 1855, and January 23, 1856, were affiliated therein with the Indian tribes that did participate in said Treaty and actually agreed to the same and signed the same.

VII.

That the District Court erred in holding and finding that the decision and action of the Indian [51] Council of 99.2 as to recognition and adoption of members was in itself authoritative, notwithstanding the fact that said proceedings of said Council were in no part approved by the Secretary of the Interior of the United States of America.

VIII.

That the District Court erred in holding and finding that under the Act of June 7, 1897, where an Indian woman who was recognized tribally at that time and married to a white husband has children, that the offspring of said children are entitled to receive allotments under the law.

IX.

That the District Court erred in holding and finding that the rights of children of a white man and an Indian woman in tribal property embraces the children of the mother who was living at the time of the passage of the Act of June 7, 1897, and was not then recognized by the tribe as one of its members.

X.

That the District Court erred in holding and finding that the plaintiff and his parents had been properly adopted into the Quinaielt tribe by the adoption action of the Indian Council of said tribe in 1912 when said action was void for not having been approved by the Secretary of the Interior of the United States.

XI.

That the District Court erred in holding and finding that the plaintiff who was born of a marriage prior to 1897 between a white man and a woman of Indian blood who was living on June 7, 1897, and not then recognized as a [52] member of the tribal Indians of the Quinaielt Reservation was entitled to allotment thereon.

XII.

That the District Court erred in entering decree herein on December 24, 1928, awarding allotments to the plaintiff herein when the evidence adduced at the time of trial herein was insufficient to sustain said decree and exceptions to said decree having been timely noted.

XIII.

That the District Court erred in holding and decreeing that the defendant, its officers and agents, are directed to issue to the plaintiff, certificate of allot-

ment of the land claimed to be selected by said plaintiff.

ANTHONY SAVAGE,
United States Attorney.

JOHN T. McCUTCHEON,
Asst. United States Attorney.

TOM DeWOLFE,
Asst. United States Attorney.

[Endorsed]: Received a copy of the within Assignments this 19th day of Mar 1929.

STUART H. ELLIOTT,
and
STUART H. ELLIOTT,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar. 20, 1929.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [53]

United States District Court, Western District of Washington, Southern Division.

No. 301-E

VERNON SIDNEY HALBERT,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER ALLOWING APPEAL

ON THE Application of the defendant herein it is hereby ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment and Decree heretofore entered and filed herein on the 24th day of December, 1928, be and the same is hereby allowed.

It is further Ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

DONE IN OPEN COURT this 20th day of March, 1929.

J. STANLEY WEBSTER,
United States District Judge.

[Endorsed]: Received a copy of the within Order this 20th day of Mar., 1929.

STUART H. ELLIOTT,
and H. G. and
DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar. 20, 1929.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [54]

In the United States District Court for the Western District of Washington, Southern Division.

No. 302-E

SIDNEY E. HALBERT, a Minor, by SIDNEY SETH HALBERT, Guardian ad litem,
Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

BILL OF COMPLAINT.

To the Honorable Judges of the Above Entitled Court: Sitting in Equity:

The plaintiff complains of the defendant and for cause of action alleges and says:

I.

That the plaintiff is and at all times since his birth has been an Indian and a member of the Quinaielt Tribe of Indians and at present resides with his father Sidney Sethe Halbert in Grays Harbor County, State of Washington, and that the said Sidney Seth

Halbert was duly and in accordance with law appointed guardian ad litem of the plaintiff by the above entitled court upon the — day of December, 1925, and he duly qualified as guardian ad litem and is now acting as such upon the behalf of the minor child, plaintiff herein.

II.

That the father and guardian ad litem of said plaintiff as herein named is an Indian duly enrolled and allotted upon the Quinaielt Indian Reservation and is the head of a family consisting of himself, his wife, and said plaintiff. [55]

III.

That the grounds upon which the court's jurisdiction depends are as follows: That the plaintiff is an Indian and a member of the Quinaielt tribe of Indians, and that his father is duly enrolled and allotted upon the Quinaielt Indian Reservation. That the plaintiff herein is entitled under the Treaty made and entered into between the United States and the Quinaielt Indians and other bands of Indians, and under the alloting acts of the United States, to an allotment of at least 80 acres of land upon the Quinaielt Indian reservation in the State of Washington and within this district. The jurisdiction of the court further depends upon the Acts of August 15, 1894 (28 Stat. L. 305) and is amended by the Act of February 6, 1901 (31 Stat. L. 760) giving the right to Indians to bring suits against the United States to establish their rights to an allotment of land.

IV.

That the father and guardian ad litem of said plaintiff is allotted upon the Quinaielt Indian Reservation as No. 643; That said plaintiff has the following named relatives allotted upon said reservation: his paternal grandmother, Lanie Ford Halbert, Quinaielt allottee No. 638; his paternal uncle Fred P. Halbert, Quinaielt allottee No. 642; his paternal uncle Benjamin F. Halbert, Quinaielt allottee No. 641; his paternal uncle Hillary Houghton Halbert, Quinaielt allottee No. 639; and his paternal uncle Ethan Ernest Halbert, Quinaielt allottee No. 640; and other persons more distantly related to the plaintiff.

V.

That the father and guardian ad litem of the plaintiff, and the plaintiff, were born and have lived all their lives and now live in Grays Harbor County, Washington, within this District, and have lived and associated and affiliated with the Quinaielt Indians during that entire period. [56]

VI.

That on or about December 1, 1923, the father of plaintiff herein duly applied to the defendant for an allotment of land for his minor child, plaintiff herein, and with the assistance and approval of the defendant's agent, the superintendent of the Taholah Indian Agency, made the following selection of land for said minor child, plaintiff herein, towit:

Lot 5, and the southwest quarter of the northwest quarter of Sec. 5, Twp. 23, North, Range 11 West, W. M.

That later the Superintendent of the Tahoiah Indian Agency, the defendant's agent herein, returned the aforesaid selection for allotment to the father and guardian ad litem of the plaintiff herein and denied the said plaintiff the identical allotment of land or any selection or allotment of land upon the Quinaielt Indian reservation whatsoever.

VII.

That thereafter and about six months ago a Special Alloting agent was sent by the defendant, more particularly the Secretary of the Interior, to the said Quinaielt Indian reservation for the purpose of alloting lands thereon to Indians entitled thereto, and the guardian ad litem of said plaintiff thereupon in due course and in accordance with law presented the above selection of land to the special alloting agent so that the same might be allotted to said minor child.

VIII.

That thereafter, plaintiff is informed and believes, said selection was regularly forwarded to the Secretary of the Interior at Washington, D. C., in accordance with law, and each and every step was regularly completed for the actual approval and [57] granting of said allotment and the issuance of the necessary patent therefor except only the approval of the Secretary of the Interior. That subsequently the defendant, more particularly the Secretary of the Interior, neglected, refused and declined to allot to said plaintiff the identical allotment herein described, or any allotment of land upon the Quinaielt Reservation whatsoever, and the defendant by its officers and

agents, more particularly the Commissioner of Indian Affairs, the Superintendent of the Quinaielt Indian Agency, and the Special Alloting Agent, returned said selection of allotment to the plaintiff denying him the right to an allotment upon said Quinaielt Indian Reservation. That said denial and refusal of plaintiff's rights to an allotment was for no reason known to plaintiff, but that such refusal and denial is arbitrary and without reason and in no manner justified, and is a denial of a right of said plaintiff as set forth by the Acts of Congress of the United States, its laws and treaties, and a refusal to perform a duty of said defendant as set forth in said laws and treaties.

IX.

That said allotment selected by plaintiff herein is unallotted, unimproved, vacant Indian lands capable of being cleared and cultivated, duly surveyed by the United States Government and subject to selection and allotment under the law of the United States.

X.

That notwithstanding all of the facts hereinbefore alleged the defendant, its officers and agents, have wrongfully failed, neglected and refused to allot the said land to the plaintiff herein, or to issue to said plaintiff any trust or fee patent [58] therefor, and have denied and excluded, and still deny and exclude, plaintiff herein from said land and have refused and still refuse to let said plaintiff go upon or reside upon said land or any portion thereof.

XI.

That said plaintiff is entitled to have said land so selected allotted to him, and desires that the same be allotted to him, and that his rights be recognized and that he be permitted to go upon, live upon, cultivate and improve said land as his home.

XII.

That the plaintiff waives answer under oath.

WHEREFORE, plaintiff prays judgment as follows:

1. That a judgment and decree be entered herein as provided by law in favor of this claimant to said 80 acre tract of land hereinbefore described, and that said decree be properly certified by the Secretary of the Interior, and that the plaintiff be awarded said land as his allotment and that he be adjudged and decreed to have full right, power and authority to go upon, live upon, cultivate and improve said land as his home, in all respects as provided by law.

2. That the plaintiff have all other and further relief as is equitable and just.

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Attorneys for Plaintiff. [59]

State of Washington,
County of *Garys* Harbor—*ss.*

SIDNEY SETH HALBERT being first duly sworn upon oath deposes and says: That he is the father and the guardian ad litem of the plaintiff in the above entitled action; that he has read the fore-

going Bill of Complaint, knows the contents thereof, and that the same is true as he verily believes.

SIDNEY SETH HALBERT.

Subscribed and sworn to before me this 18 day of December, 1925.

[Notary Seal] CHAS. E. KUHN,
Notary Public in and for the State of Washington, residing, at Hoquiam.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Jul 19, 1926.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [60]

United States District Court, Western District of Washington, Southern Division.

No. 302-E.

SIDNEY E. HALBERT, a Minor, by SIDNEY SETH HALBERT, Guardian ad litem,
Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

AMENDED ANSWER.

Comes now the above named defendant by its attorney, and by way of amended answer to plaintiff's bill of complaint, admits, denies and alleges as follows:

I.

Referring to paragraph I of plaintiff's bill of complaint, defendant denies that plaintiff is a member of the Quinaielt Tribe of Indians, and admits each and every other material allegation contained therein.

II.

Referring to paragraph II defendant admits that the father and guardian ad litem of said plaintiff is duly enrolled and allotted upon the Quinaielt Reservation, and denies each and every other material allegation contained therein.

III.

Referring to paragraph III defendant admits the jurisdiction of the above entitled court and denies each and every other material allegation contained therein.

IV.

Referring to paragraph IV defendant admits the same. [61]

V.

Referring to paragraph V defendant admits that the plaintiff was born in Gray's Harbor County, Washington, and denies each and every other material allegation contained therein.

VI.

Referring to paragraph VI the defendant admits the same.

VII.

Referring to paragraph VIII defendant admits that it has refused to allot land to said plaintiff and denies

each and every other material allegation contained therein.

VIII.

Referring to paragraph IX defendant admits the same.

IX.

Referring to paragraph X defendant admits that it has refused to allot lands to the plaintiff, but denies that said refusal was wrongful.

X.

Referring to paragraph XI defendant denies the same.

WHEREFORE, having answered plaintiff's bill of complaint, defendant prays that said action be dismissed, and that it have and recover its costs herein.

THOS. P. REVELLE,
United States Attorney.

DAVID L. SPAULDING,
Assistant United States Attorney [62]

United States of America,
Western District of Washington,
Southern Division—ss.

DAVID L. SPAULDING, being first duly sworn, on oath deposes and says: That he is an Assistant United States Attorney for the Western District of Washington, and makes this verification for and on behalf of the United States of America, defendant herein; that he has read the foregoing amended An-

swer; knows the contents thereof and believes the same to be true.

DAVID L. SPAULDING.

Subscribed and sworn to before me this 10th day of November, 1927.

[Seal] ALINE ESLER,
Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Nov. 11, 1927.

ED. M. LAKIN,
Clerk.

By E. R.,
Deputy. [63]

In the United States District Court for the Western District of Washington, Southern Division.

No. 302 E.

SIDNEY E. HALBERT, a Minor, by SIDNEY SETH HALBERT, Guardian ad litem,
Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

DECREE.

This cause came on to be heard at this term, the plaintiff Sidney E. Halbert, a minor, by Sidney Seth Halbert, Guardian ad litem, appearing by his counsel Stuart H. Elliott, and H. G. & Dix H. Rowland,

and the defendant appearing by its counsel Anthony Savage, U. S. District Attorney, Seattle, Wash., David Spaulding, Asst. U. S. District Attorney, Seattle, Wash., John T. McCutcheon, Asst. U. S. District Attorney, Tacoma, James T. Rahily, Associate Counsel, Washington, D. C.; and the court having taken the matter under advisement and rendered his memorandum decision herein after said cause had been submitted to the court upon written briefs, and thereupon upon consideration thereof it is

ORDERED, ADJUDGED AND DECREED:

That plaintiff Sidney E. Halbert, a Minor, be and he is hereby entitled to the lands heretofore selected by him situate upon the Quinaielt Indian Reservation within this District, *in* Grays Harbor County, in the State of Washington, to-wit:

> Lot 5, and the southwest quarter of the northwest quarter of Section Five (5), Township Twenty-three (23) North, Range Eleven (11) West, of the Willamette Meridian, in the State of Washington. [64]

as an allotment to be held and owned by said plaintiff in all respects as provided by law.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents, be and they are hereby ordered and directed to issue to said plaintiff, certificate of allotment of said lands heretofore described, said certificate of allotment to be in effect and to award to said plaintiff all of the rights to which said plaintiff is entitled under and by virtue of the laws of the United States.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents and all persons claiming by, through or under them, be and they are hereby forever barred and estopped from ever claiming or asserting that said plaintiff, his heirs, executors, administrators and assigns, are not entitled to said lands as and for their allotments, with full right to use, build upon, clear, improve, and occupy the same, in all respects as provided by law, to all of which the defendant excepts and its exception is allowed.

DONE in open court this 24th day of December A. D. 1928.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: O. K. as to form.

D. SPAULDING,
Asst. U. S. Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec 24 1928

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [65]

United States District Court, Western District of Washington, Southern Division.

No. 302-E

SIDNEY E. HALBERT, etc.,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ASSIGNMENTS OF ERRORS.

Comes now the above named defendant, the United States of America, by and through its attorneys, Anthony Savage, United States Attorney for the Western District of Washington, and John T. McCutcheon and Tom DeWolfe, Assistant United States Attorneys for said District, and James T. Rahily, Associate Counsel, and respectfully submits the following Assignments of Errors upon which it relies in support of its appeal from the judgment and decree entered on the 24th day of December, 1928, in said cause, in the District Court of the United States for the Southern Division of the Western District of Washington, and under which Assignments of Error said appellant seeks reversal of the decision, judgment and decree of said Court:

I.

That the District Court erred in holding and finding that the land selected for allotment by the plaintiff was subject to selection and allotment under the laws of the United States, and that the plaintiff is lawfully entitled to have such land allotted to him.

II.

That the District Court erred in holding and finding that the officers and agents of the United States of America have wrongfully failed, neglected and refused to allot the said land to the said plaintiff, or to issue to the [68] plaintiff any trust or fee patent therefor.

III.

That the District Court erred in adjudging that the plaintiff was entitled to a decree adjudging and decreeing that the said plaintiff is entitled to the land selected for his allotment, and that the plaintiff is entitled to have said land alloted to him by the defendant, its officers and agents.

IV.

That the District Court erred in concluding, holding, and finding that the plaintiff is entitled to a decree estopping the defendant, its officers and agents, from hereafter interfering with the plaintiff in his right to possession of said land and his right to improve the same, and estopping the defendant from hereafter claiming or asserting that said plaintiff is not entitled to go upon, clear, improve, and build upon said land.

V.

That the District Court erred in holding and finding that the general allotment statutes and acts do not apply and that the Act of March 4, 1911, is a special allotment act, when said Act of March 4, 1911, expressly provides that allotments are made

under the provisions of the allotment laws of the United States.

VI.

That the District Court erred in holding and finding that the Indian tribes who refused to become parties to the Treaty of July 1, 1855, and January 23, 1856, were affiliated therein with the Indian tribes that did participate in said Treaty and actually agreed to the same and signed the same.

VII.

That the District Court erred in holding [69] and finding that the decision and action of the Indian Council of 1922 as to recognition and adoption of members was in itself authoritative, notwithstanding the fact that said proceedings of said Council were in no part approved by the Secretary of the Interior of the United States of America.

VIII.

That the District Court erred in holding and finding that under the Act of June 7, 1897, where an Indian woman who was recognized tribally at that time and married to a white husband has children, that the offspring of said children are entitled to receive allotments under the law.

IX.

That *theDistrict* Court erred in holding and finding that the rights of children of a white man and an Indian woman in tribal property embraces the children of the mother who was living at the time of the passage of the Act of June 7, 1897, and was not then recognized by the tribe as one of its members.

X.

That the District Court erred in holding and finding that the plaintiff and his parents had been properly adopted into the Quinaielt tribe by the adoption action of the Indian Council of said tribe of 1912 when said action was void for not having been approved by the Secretary of the Interior of the United States.

XI.

That the District Court erred in holding and finding that the plaintiff who was born of a marriage prior to 1897 between a white man and a woman of Indian blood who was living on June 7, 1897, and not then recognized as a [70] member of the tribal Indians of the Quinaielt Reservation was entitled to allotment thereon.

XII.

That the District Court erred in entering decree herein on December 24, 1928, awarding allotment to the plaintiff herein when the evidence adduced at the time of trial herein was insufficient to sustain said decree and exceptions to said decree having been timely noted.

XIII.

That the District Court erred in holding and decreeing that the defendant, its officers and agents, are directed to issue to the plaintiff, certificate of

allotment of the land claimed to be selected by said plaintiff.

ANTHONY SAVAGE,
United States Attorney.

JOHN T. McCUTCHEON,
Assistant United States Attorney.

TOM DeWOLFE,
Assistant United States Attorney.

[Endorsed]: Received a copy of the within Assignments this 19th day of March 1929.

STUART H. ELLIOTT
and
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar 20 1929

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [71]

United States District Court, Western District of Washington, Southern Division.

No. 302-E

SIDNEY E. HALBERT,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER ALLOWING APPEAL.

On the application of the defendant herein it is hereby ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment and Decree heretofore entered and filed herein on the 24th day of December, 1928, be and the same is hereby allowed.

It is further ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

DONE IN OPEN COURT this 20th day of March, 1929.

J. STANLEY WEBSTER,
Judge.

[Endorsed]: Received a copy of the within Order this 20th day of Mar 1929.

STUART H. ELLIOTT
and
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar 20 1929

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [72]

In the United States District Court for the Western District of Washington, Southern Division.

No. 306 E

ARCHIE PELLARD,
Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

BILL OF COMPLAINT.

To the Honorable Judges of the Above Entitled Court: Sitting in Equity:—

The plaintiff complains of the defendant and for cause of action alleges and says:—

I.

That the plaintiff is and at all times since his birth has been a person of part Indian blood, over the age of 21 years, being a member of the Quinaielt tribe of Western Washington, and at present resides in Wahkiakum County, State of Washington, in this District.

II.

That the plaintiff, as before stated, is a Quinaielt Indian and has been all of his life recognized as a member of said Quinaielt tribe, and that at all times mentioned herein has associated and affiliated with the Quinaielt and affiliated and associated bands and tribes of fish-eating Indians of Western Washington living along the Pacific Coast, and for the past fourteen years has lived the greater portion of the time upon the Quinaielt Indian Reservation in Grays Harbor County, Washington, within this District. [73]

III.

That the defendant has recognized other members of the plaintiff's immediate family as Quinaielt Indians and has allotted said members of his family upon the Quinaielt Indian Reservation, among whom are his full blood sister Adeline James Lohre, Quinaielt allottee No. 529, a niece Sophia Millett Yerkes, Quinaielt allottee No. 501, and the following named nieces: Ellen Baker, Daisy Borg, Cora Walters John, France James Payne, Eleanor James Chenois, and Maria James Ross, and the following named grandnieces and nephews: Chester Millett, Arthur Yerkes, Secar Yerkes, Harry Baker and Fred Baker. That plaintiff has other and more distant relatives allotted upon said Quinaielt Indian Reservation.

IV.

That plaintiff is a widower, his deceased wife being named Nina Banchio. That the said Nina Banchio was a recognized member of the Quinaielt Indian tribe and numerous members of her family are

recognized members of the Quinaielt tribe and are allotted land upon the Quinaielt Indian Reservation.

V.

That the grounds upon which the court's jurisdiction depends are as follows: That the plaintiff is an Indian and a member of the Quinaielt Tribe of Indians, and is entitled under the treaty made and entered into between the United States and the Quinaielt Indians and other bands of Indians, and under the alloting acts of the United States, to an allotment of at least 80 acres of land upon the Quinaielt Indian Reservation in the State of Washington and within this district. The jurisdiction of the Court further depends upon the Acts of August 15, 1894, (28 Stat. L. 305) as is amended by the Act of February 6, 1901, [74] (31 Stat. L. 760), giving the right to Indians to bring suits against the United States to establish their rights to an allotment of land.

VI.

That about fourteen years ago said defendant, through its officers and agents, more particularly a special allotting agent and the Agent of the Quinaielt Indian Reservation, was engaged in allotting land upon the Quinaielt Indian Reservation to Indians entitled thereto, and at this time said plaintiff presented himself to said superintendent and special allotting agent, made a selection and requested that he be allotted 80 acres of land upon said Quinaielt Indian reservation, whereupon the defendant, more particularly said special allotting agent, received and accepted said selection of land and as fully as could be done said allot-

ments was set aside by the defendants, its officers and agents, to your plaintiff herein. That later plaintiff was informed by the defendant, its officers and agents, that the remaining land embraced in the Quinaielt Indian Reservation was then classified as timber land the same not being classified as agricultural or grazing land, said selection could not be allowed or allotted said plaintiff at that time, denying plaintiff the right to go upon the land so selected, clear the same and make a home thereon.

That thereafter and upon numerous occasions plaintiff applied to defendant, its officers and agents, for an allotment of land upon said reservation and requested permission to go upon the same and make a home thereon, and was each time denied said allotment, for the reason that the defendant, its officers and agents believed and stated that the remaining land embraced in said reservation was timber land and as such was not allotable [75] to individual Indians under the laws of the United States.

VII.

That thereafter and about a year and a half ago, a special allotting agent was sent by the defendant, more particularly the Secretary of the Interior, to said Quinaielt Indian reservation, for the purpose of allotting all of the remaining unallotted land on said reservation to Indians entitled thereto, and the said plaintiff thereupon in due course and in accordance with law, regularly proceeded to make a selection for an allotment of land on said Quinaielt Indian Reservation, which allotment is described in words and figures as follows, towit:—

The West half of the Northwest quarter of Section 21, Township 22 North of Range 12 West, W. M., containing 80 acres.

VIII.

That thereafter, plaintiff is informed and believes, said selection was regularly forwarded to the Secretary of the Interior at Washington, D. C., in accordance with law, and each and every step was regularly completed for the actual approval and granting of said allotment and the issuance of the necessary patent therefor except only the approval of the Secretary of the Interior. That on or about the 14th day of October, 1926, the defendant, more particularly the Secretary of the Interior and the Commissioner of Indian Affairs, neglected, refused and declined to allot to said plaintiff the identical allotment herein described, or any allotment of land upon the Quinaielt Reservation whatsoever. That said denial and refusal of plaintiff's right to allotment was for no reason known to plaintiff, but that such refusal and denial is arbitrary and without reason and in no manner justified, and is a denial of a right of said [76] plaintiff as set forth by the Acts of Congress of the United States, its laws and treaties, and a refusal to perform a duty of said defendant as set forth in said laws and treaties.

IX.

That said allotment selected by plaintiff herein is unallotted, unimproved, vacant Indian lands capable of being cleared and cultivated, duly surveyed by the United States Government and subject to selec-

tion and allotment under the laws of the United States.

X.

That notwithstanding all of the facts hereinbefore alleged the defendant, its officers and agents, have wrongfully failed, neglected and refused to allot the said land to the plaintiff herein, or to issue to said plaintiff any trust or fee patent therefor, and have denied and excluded, and still deny and exclude, plaintiff herein from said land and have refused and still refuse to let said plaintiff go upon or reside upon said land or any portion thereof.

XI.

That the said plaintiff is entitled to have said land so selected by him allotted to him, and desires that the same be allotted to him and that his rights be recognized and that he be permitted to go upon, live upon, cultivate and improve said land as his home.

XII.

That plaintiff waives answer under oath.

WHEREFORE, plaintiff prays judgment as follows:—

1. That a judgment and decree be entered herein as provided by law in favor of this claimant to said 80 acre tract of [77] land hereinbefore described and that said decree be properly certified by the Secretary of the Interior, and that the plaintiff be awarded said land as his allotment and that he be adjudged and decreed to have full right, power and authority to go upon, live upon, cultivate and improve said land as his home, in all respects as provided by law.

2. That the plaintiff have all other and further relief as is equitable and just.

STUART H. ELLIOTT
H. G. & DIX H. ROWLAND,
Attorneys for Plaintiff.
302 Equitable Building,
Tacoma, Washington.

State of Washington,
County of Wahkiakum,—ss.

ARCHIE PELLARD being first duly sworn on oath deposes and says: That he is the plaintiff in the above entitled action; that he has read the foregoing Bill of Complaint, knows the contents thereof and that the same is true as he verily believes.

ARCHIE PELLARD

Subscribed and sworn to before me this 11th day of November, 1926.

[Notary Seal] N. W. TALLANT
Notary Public in and for the State of Washington, residing at Brookfield, Wash.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Nov 24, 1926

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [78]

United States District Court, Western District of Washington, Southern Division.

No. 306 E

ARCHIE PELLARD,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

AMENDED ANSWER.

Comes now the above named defendant by its attorney, and by way of amended answer to plaintiff's bill of complaint, admits, denies and alleges as follows:

I.

Referring to paragraph I of plaintiff's bill of complaint, defendant admits that plaintiff is a person of part Indian blood; defendant denies each and every other material allegation therein contained.

II.

Referring to paragraph II, defendant denies each and every material allegation therein contained.

III.

Referring to paragraphs III, IV and V of plaintiff's bill of complaint, defendant admits every material allegation therein contained.

IV.

Referring to paragraph VI, defendant denies each and every material allegation therein contained. [79]

V.

Referring to paragraph VII, defendant admits that a Special Allotting Agent was sent to the Quinaielt Indian Reservation for the purpose of allotting lands upon said Reservation to Indians entitled thereto; defendant denies each and every other allegation therein contained.

VI.

Referring to paragraph VIII, defendant denies each and every material allegation therein contained.

VII.

Referring to paragraph IX, defendant admits that the land described in paragraph VII of plaintiff's bill of complaint is surveyed, unallotted, unimproved, vacant Indian land.

VIII.

Referring to paragraph X, defendant admits that it has refused to allot said land to the plaintiff herein, but denies that said refusal was wrongful.

IX.

Referring to paragraph XI, defendant denies each and every material allegation therein contained.

WHEREFORE, having answered plaintiff's bill of complaint, defendant prays that said action be dismissed, and that it have and recover its costs.

THOS. P. REVELLE,
United States Attorney.

DAVID L. SPAULDING,
Assistant United States Attorney. [80]

United States of America,
Western District of Washington,
Southern Division,—ss.

DAVID L. SPAULDING, being first duly sworn, on oath deposes and says: That he is an Assistant United States Attorney for the Western District of Washington and makes this verification for and on behalf of the United States of America, defendant herein; that he has read the foregoing Amended Answer, knows the contents thereof and believes the same to be true.

DAVID L. SPAULDING.

SUBSCRIBED and sworn to before me this 5th day of November, 1927.

[Seal] ALINE ESLER,

Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Nov 9, 1927

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [81]

In the United States District Court for the Western District of Washington, Southern Division

No. 306 E

ARCHIE PELLARD,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

DECREE.

This cause came on to be heard at this term, the plaintiff, Archie Pellard appearing by his counsel Stuart H. Elliott and H. G. & Dix H. Rowland, and the defendant appearing by its counsel Anthony Savage, U. S. District Attorney, Seattle, Wash., David Spaulding, Asst. U. S. District Attorney, Seattle, Wash., John T. McCutcheon, Asst. U. S. District Attorney, Tacoma, James T. Rahily, Associate Counsel, Washington, D. C.; and the court having taken the matter under advisement and rendered his memorandum decision herein after said cause had been submitted to the court upon written briefs, and thereupon upon consideration thereof it is

ORDERED, ADJUDGED AND DECREED:

That plaintiff, Archie Pellard be and he is hereby entitled to the lands heretofore selected by him situate upon the Quinaielt Indian Reservation, within this District, in Grays Harbor County, in the State of Washington, to-wit:

The West half of the Northwest quarter of Section 21, Township 22 North of Range 12 West, W. M., containing 80 acres.

as an allotment to be held and owned by said plaintiff, in all [82] respects as provided by law.

It is FURTHER ORDERED, ADJUDGED AND DECREED That the defendant, its officers and agents, be and they are hereby ordered and directed to issue to said plaintiff certificates of allotment of said land heretofore described, said certificate of allotment to be in effect and to award to said plaintiff all of the rights to which said plaintiff is entitled under and by virtue of the laws of the United States.

IT *IF* FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents and all persons claiming by, through or under them, be and they are hereby forever barred and estopped from ever claiming or asserting that said plaintiff, his heirs, executors, administrators and assigns, are not entitled to said land as and for their allotment, with full right to use, build upon, clear, improve, and occupy the same, in all respects as provided by law; to all of which the defendant excepts and its exception is allowed.

Done in open court this 24th day of December A. D. 1928.

EDWARD E. CUSHMAN
Judge.

[Endorsed]: O. K. as to form

D. SPAULDING
(Asst. U. S. Attorney)

[Endorsed]: Filed in the United States District

Court, Western District of Washington, Southern Division Dec 24 1928

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [83]

United States District Court, Western District of Washington, Southern Division.

No. 306-E

ARCHIE PELLARD,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

ASSIGNMENTS OF ERRORS.

Comes now the above named defendant, the United States of America, by and through its attorneys, Anthony Savage, United States Attorney for the Western District of Washington, and John T. McCutcheon and Tom DeWolfe, Assistant United States Attorneys for said District, and James T. Rahily, Associate Counsel, and respectfully submits the following Assignments of Errors upon which it relies in support of its appeal from the judgment and decree entered on the 24th day of December, 1928, in said cause, in the District Court of the United States for the Southern Division of the Western District of Washington, and under which Assignments of Error said appellant

seeks reversal of the decision, judgment and decree of said Court:

I.

That the District Court erred in holding and finding that the land selected for allotment by the plaintiff was subject to selection and allotment under the laws of the United States, and that the plaintiff is lawfully entitled to have such land allotted to him.

II.

That the District Court erred in holding and finding that the officers and agents of the United States of America have wrongfully failed, neglected and refused to allot the said land to the said plaintiff, or to issue to the [86] plaintiff any trust or fee patent therefor.

III.

That the District Court erred in adjudging that the plaintiff was entitled to a decree adjudging and decreeing that the said plaintiff is entitled to the land selected for his allotment, and that the plaintiff is entitled to have said land allotted to him by the defendant, its officers and agents.

IV.

That the District Court erred in concluding, holding, and finding that the plaintiff is entitled to a decree estopping the defendant, its officers and agents, from hereafter interfering with the plaintiff in his right to possession of said land and his right to improve the same, and estopping the defendant from hereafter claiming or asserting that said plaintiff is

not entitled to go upon, clear, improve, and build upon said land.

V.

That the District Court erred in holding and finding that the general allotment statutes and acts do not apply and that the Act of March 4, 1911, is a special allotment act, when said Act of March 4, 1911, expressly provides that allotments are made under the provisions of the allotment laws of the United States.

VI.

That the District Court erred in holding and finding that the Indian tribes who refused to become parties to the Treaty of July 1, 1855, and January 23, 1856, were affiliated therein with the Indian tribes that did participate in said Treaty and actually agreed to the same and signed the same. [87]

VII.

That the District Court erred in holding and finding that the decision and action of the Indian Council of 1922 as to recognition and adoption of members was in itself authoritative, notwithstanding the fact that said proceedings of said Council were in no part approved by the Secretary of the Interior of the United States of America.

VIII.

That the District Court erred in holding and finding that under the Act of June 7, 1897, where an Indian woman who was recognized tribally at that time and married to a white husband has children, that

the offspring of said children are entitled to receive allotments under the law.

IX.

That the District Court erred in holding and finding that the rights of children of a white man and an Indian woman in tribal property embraces the children of the mother who was living at the time of the passage of the Act of June 7, 1897, and was not then recognized by the tribe as one of its members.

X.

That the District Court erred in holding and finding that the plaintiff and his parents had been properly adopted into the Quinaielt tribe by the adoption action of the Indian Council of said tribe of 1912 when said action was void for not having been approved by the Secretary of the Interior of the United States.

XI.

That the District Court erred in holding and finding that the plaintiff who was born of a marriage prior to 1897 between a white man and a woman of Indian blood who was living on June 7, 1897, and not then recognized as a [87 A] member of the tribal Indians of the Quinaielt Reservation was entitled to allotment thereon.

XII.

That the District Court erred in entering decree herein on December 24, 1928, awarding allotment to the plaintiff herein when the evidence adduced at the time of trial herein was insufficient to sustain said de-

cree and exceptions to said decree having been timely noted.

XIII.

That the District Court erred in holding and decreeing that the defendant, its officers and agents, are directed to issue to the plaintiff, certificate of allotment of the land claimed to be selected by said plaintiff.

ANTHONY SAVAGE,
United States Attorney.

JOHN T. McCUTCHEON,
Assistant United States Attorney.

TOM DeWOLFE,
Assistant United States Attorney.

[Endorsed]: Received a copy of the within Assignments this 19th day of March, 1929.

STUART H. ELLIOTT
and
H. G. & DIX H. ROWLAND,
Attorney for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, March 20, 1929.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [88]

United States District Court, Western District of Washington, *Northern* Division.

No. 306 E

ARCHIE PELLARD,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER ALLOWING APPEAL.

On application of the defendant herein it is hereby ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and decree heretofore entered and filed herein on the 24th day of December, 1928, be and the same is hereby allowed.

It is further ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 20th day of March, 1929.

J. STANLEY WEBSTER,
Judge.

[Endorsed]: Received a copy of the within Order this 20th day of March, 1929.

STUART H. ELLIOTT
and
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District

Court, Western District of Washington, Southern Division, Mar 20 1929.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [89]

In the United States District Court for the Western District of Washington, Southern Division.

No. 307 E

ROSE PEERS PICKERNOLL, and MABLE PEERS WHITE, and AMELIA PEERS ALDEN,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

BILL OF COMPLAINT.

To the Honorable Judges of the above entitled Court: Sitting in Equity:

The plaintiffs complain of the defendant and for cause of action allege and says:

I.

That the plaintiffs are and at all times herein set forth have been persons of part Indian blood, over the age of twenty-one years, and members of the Quinaielt tribe of Indians, and reside in the State of Washington within this District.

II.

That the father of the plaintiffs was named Henry Peers and that he is now deceased. That the said Henry Peers was an Indian, being a member of an associated and affiliated band of Indians of the Quinaielt Indian tribe, and a fish-eating Indian of the Pacific Coast in Western Washington. That the mother of these plaintiffs was named Judith Ducheney, who died long ago, and that she was an Indian and a recognized member of the Quinaielt tribe of Indians.

III.

That the defendant has recognized many members of plaintiffs' family as belonging to the Quinaielt Indian tribe and plaintiffs have the following members of their family allotted [90] upon the Quinaielt Indian Reservation, towit: A paternal aunt, Adeline James Lohre, and seven children of the said Adeline James Lohre. A maternal aunt, Agnes Elliott, and nine children of the said Agnes Elliott. That said plaintiffs have numerous other relatives allotted upon the Quinaielt Indian Reservation. That the said plaintiffs Amelia Peers Alden and Rose Peers Pickernoll were born, reared, and now live, in Pacific County, Washington, and the plaintiff Mabel Peers White was born and reared in Wahkiakum County, Washington, within this District.

IV.

That the plaintiffs as above set forth are full blood sisters and that by reason of this fact and the facts hereinafter set forth relative to the selection and denial of certain allotments of land upon the Quinaielt Indian Reservation, under respectively the same conditions

and like circumstances, these plaintiffs have a common interest in the subject matter of this action and are affected in a similar manner.

V.

That the grounds upon which the Court's jurisdiction rests are as follows: That the plaintiffs are Indians and members of the Quinaielt tribe of Indians, and are entitled under the treaty made and entered into between the United States and the Quinaielt Indians and other bands of Indians, and under the allotting acts of the United States, to an allotment of at least 80 acres, each, of land upon the Quinaielt Indian Reservation in the State of Washington and within this district. The jurisdiction of the Court further depends upon the Acts of [91] August 15, 1894, (28 Stat. L. 305) as amended by the Act of February 6, 1901, (31 Stat. L. 760); giving the right to Indians to bring suits against the United States to establish their rights to an allotment of land.

VI.

That about a year and a half ago a Special Allotting Agent was sent by the defendant, more particularly the Secretary of the Interior, to the said Quinaielt Indian Reservation for the purpose of allotting land upon said reservation to Indians entitled thereto, and said plaintiffs in due course and in accordance with law, regularly proceeded to make selections for allotments of land upon said Quinaielt Indian Reservation, which allotments are described in words and figures as follows, towit:

Amelia Peers Alden—W½ of SE¼, Sec. 16, T. 22 N., R. 12 W., W.M.

Rose Peers Pickernoll—E½ of SE¼, Sec. 16, T. 22 N., R. 12 W., W.M.

Mable Peers White—E½ of NE¼, Sec. 16, T. 22 N., R. 12, W., W.M.

VII.

That thereafter, plaintiffs are informed and believe, said selections were regularly forwarded to the Secretary of the Interior at Washington, D. C., in accordance with law, and each and every step was regularly completed for the actual approval and granting of said allotments and the issuance of the necessary patents therefor except only the approval of the Secretary of the Interior. That recently the defendant, more particularly the Secretary of the Interior and the Commissioner of Indian Affairs, neglected, refused and declined to allot to said plaintiffs the identical allotments herein described or any allotments of land upon the Quinaielt Reservation whatsoever. That said denial and refusal [92] of plaintiffs' rights to allotments was for no reason known to plaintiffs, but that such refusal and denial is arbitrary and without reason and in no manner justified, and is a denial of a right of said plaintiffs as set forth by the Acts of Congress of the United States, its laws and treaties, and a refusal to perform a duty of said defendant as set forth in said laws and treaties.

VIII.

That said allotments selected by plaintiffs herein are unallotted, unimproved, vacant Indian lands capable of being cleared and *cultivated*, duly surveyed by the United States Government and subject to selection and allotment under the laws of the United States.

IX.

That notwithstanding all of the facts hereinbefore alleged, the defendant, its officers and agents, have wrongfully failed, neglected and refused to allot the said lands to the plaintiffs herein, or to issue to said plaintiffs any trust or fee patent therefor, and have denied and excluded, and still deny and exclude, plaintiffs herein from said land and have refused and still refuse to let said plaintiffs go upon or reside upon said lands or any portion thereof.

X.

That the said plaintiffs are entitled to have said lands so selected by them allotted to them, and desire that the same be allotted to them and that their rights be recognized and that they be permitted to go upon, live upon, cultivate and improve said lands as their homes.

XI.

That plaintiffs waive answer under oath. [93]

WHEREFORE, plaintiffs pray judgment as follows:

1. That a judgment and decree be entered herein as provided by law in favor of these claimants to said 80 acre tracts of land hereinbefore described, and that said decree be properly certified by the Secretary of the Interior, and that the plaintiffs be awarded said lands as their allotments and that they be adjudged and decreed to have full right, power and authority to go upon, live upon, cultivate and improve said lands as their homes, in all respects as provided by law.

2. That the plaintiffs have all other and further relief as is equitable and just.

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Attorneys for plaintiffs.
302 Equitable Building,
Tacoma, Washington.

State of Washington,
County of Pacific,—ss.

ROSE PEERS PICKERNOLL being first duly sworn on oath deposes and says: That she is one of the plaintiffs in the above entitled action; that she has read the foregoing Bill of Complaint, knows the contents thereof and that the same is true as she verily believes.

ROSE PEERS *PICKERNELL.*

Subscribed and sworn to before me this 23rd day of November, 1926.

[Seal] JOHN W. HOWERTON,
Notary Public in and for the State of Washington, residing at Ilwaco, Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Nov. 24, 1926.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [94]

United States District Court, Western District of Washington, Southern Division.

No. 307-E.

ROSE PEERS PICKERNOLL,
MABEL PEERS WHITE, and
AMELIA PEERS ALDEN,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

AMENDED ANSWER.

Comes now the above named defendant by its attorney, and by way of amended answer to plaintiffs' bill of complaint, admits, denies and alleges as follows:

I.

Answering paragraph I of plaintiffs' bill of complaint, defendant denies that plaintiffs are members of the Quinaielt Tribe of Indians, and admits every other material allegation therein contained.

II.

Referring to paragraph II, defendant admits that Henry Peers is the father of the above named plaintiffs; defendant denies that said Henry Peers was a member of an associated and affiliated band of Indians of the Quinaielt Tribe; defendant admits that the father of these plaintiffs was a fish-eating Indian, but denies that said father of these plaintiffs was a member of any tribe entitled to rights in the Quinaielt Reservation; defendant admits that the mother of these plain-

tiffs was Judith Ducheney, but denies that said mother of these plaintiffs was a member of the Quinaielt Tribe of Indians.[95]

III.

Referring to paragraph III, defendant denies each and every material allegation therein contained.

IV.

Referring to paragraph IV, defendant has not sufficient knowledge, information or belief, and therefore denies the same.

V.

Referring to paragraph V, defendant admits the same.

VI.

Referring to paragraph VI, defendant admits that a special Alloting Agent was sent to said Quinaielt Indian Reservation for the purpose of alloting land upon said Reservation to Indians entitled thereto; defendant denies each and every other material allegation therein contained.

VII.

Referring to paragraph VII, defendant denies each and every material allegation therein contained.

VIII.

Referring to paragraph VIII, defendant admits the same.

IX.

Referring to paragraph IX, defendant admits that it has refused to allot said lands to the plaintiffs herein;

defendant admits it has excluded, and still does exclude, said plaintiffs from said land, but denies that said acts are wrongful.

X.

Referring to paragraph X, defendant denies each and every material allegation therein contained.

WHEREFORE, having answered plaintiff's bill of complaint, defendant prays that said action be dismissed, and that it have and recover its costs. [96]

THOS. P. REVELLE,
United States Attorney.

DAVID L. SPAULDING,
Assistant United States Attorney.

United States of America,
Western District of Washington,
Southern Division,—ss.

DAVID L. SPAULDING, being first duly sworn, on oath deposes and says: That he is an Assistant United States Attorney for the Western District of Washington and makes this verification for and on behalf of the United States of America, defendant herein; that he has read the foregoing Amended Answer, knows the contents thereof and believes the same to be true.

DAVID L. SPAULDING.

Subscribed and sworn to before me this 5th day of November, 1927.

[Seal] ALINE ESLER,
Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Nov. 9, 1927.

ED. M. LAKIN,
Clerk.
By E. R.,
Deputy. [97]

In the United States District Court for the Western District of Washington, Southern Division.

No. 307-E.

ROSE PEERS PICKERNOLL, MABEL PEERS WHITE and AMELIA PEERS ALDEN,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

DECREE

This cause came on to be heard at this term, the plaintiffs appearing personally and by their counsel Stuart H. Elliott and H. G. & Dix H. Rowland, and the defendant appearing by its *counsel* Anthony Savage, U. S. District Attorney, Seattle, Wash., David Spaulding, Asst. District Attorney, Seattle, Wash., John T. McCutcheon, Asst. U. S. District Attorney, Tacoma, James T. Rahily, Associate Counsel, Washington, D. C.; and the Court having taken the matter under advisement and rendered his memorandum decision herein after said cause had been submitted to

the court upon written briefs, and *thereupkn* upon consideration thereof it is

ORDERED, ADJUDGED AND DECREED:

That plaintiffs Rose Peers Pickernoll, Mabel Peers White and Amelia Peers Alden be and they are entitled to the lands heretofore selected by them, situate upon the Quinaielt Indian Reservation, within this District, in Grays Harbor County, in the State of Washington, to-wit:

Rose Peers Pickernoll—The East half of the Southeast quarter of Section Sixteen (16), Township Twenty-two (22) North, Range Twelve (12) West, Willamette Meridian. [98]

Mabel Peers White—The East half of the Northeast quarter of Section *Dixteen* (16), Township Twenty-two (22) North, Range Twelve (12) West, Willamette Meridian.

Amelia Peers Alden—The West half of the Southeast quarter of Section Sixteen (16), Township Twenty-two (22) North, Range Twelve (12) West, Willamette Meridian.

as allotments to be held and owned by said plaintiffs, in all respects as provided by law. It is further

ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents, be and they are hereby ordered and directed to issue to said plaintiffs, certificates of allotment, to be in effect and to award to said plaintiffs all of the rights to which said plaintiffs are entitled under and by virtue of the laws of the United States. It is further

ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents and all persons claiming by, through or under them, be and they are hereby forever barred and estopped from ever claiming or asserting that said plaintiffs, their heirs, executors, administrators, and assigns are not entitled to said land as and for their allotment, with full right to use, build upon, clear, improve and occupy the same in all respects as provided by law; to all of which defendant excepts and its exception is allowed.

Done in open court this 24th day of December A. D. 1928.

EDWARD E. CUSHMAN,
Judge.

O. K. as to form.

D. SPAULDING,
Assistant Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 24 1928.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [99]

United States District Court, Western District of Washington, Southern Division.

No. 307-E.

ROSE PEERS PICKERNOLL, et al.,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

ASSIGNMENTS OF ERROR.

Comes now the above named defendant, the United States of America, by and through its attorneys, Anthony Savage, United States Attorney for the Western District of Washington, and John T. McCutcheon and Tom DeWolfe, Assistant United States Attorneys for said District, and James T. Rahily, Associate Counsel, and respectfully submits the following Assignments of Error upon which it relies in support of its appeal from the judgment and decree entered on the 24th day of December, 1928, in said cause, in the District Court of the United States for the Southern Division of the Western District of Washington, and under which Assignments of Error said appellant seeks reversal of the decision, judgment and decree of said Court:

I.

That the District Court erred in holding and finding that the lands selected for the allotment by the plaintiff were subject to selection and allotment under the laws of the United States, and that the plaintiffs are lawfully entitled to have such lands allotted to them.

II.

That the District Court erred in holding and finding that the officers and agents of the United States of America have wrongfully failed, neglected and refused to allot the said lands to the said plaintiffs, or to issue to the plaintiffs any trust or fee patent therefor. [104]

III.

That the District Court erred in adjudging that the plaintiffs were entitled to a decree adjudging and decreeing that the said plaintiffs are entitled to the lands selected for their allotments, and that the plaintiffs are entitled to have said lands allotted to them by the defendant, its officers and agents.

IV.

That the District Court erred in concluding, holding, and finding that the plaintiffs are entitled to a decree estopping the defendant, its officers and agents, from hereafter interfering with the plaintiffs in their rights to possession of said lands and their rights to improve the same, and estopping the defendant from hereafter claiming or asserting that said plaintiffs are not entitled to go upon, clear, improve, and build upon said lands.

V.

That the District Court erred in holding and finding that the general allotment statutes and acts do not apply and that the Act of March 4, 1911, is a special allotment act, when said Act of March 4, 1911, expressly provides that allotments are made under the provisions of the allotment laws of the United States.

VI.

That the District Court erred in holding and finding that the Indian tribes who refused to become parties to the Treaty of July 1, 1855, and January 23, 1856, were affiliated therein with the Indian tribes that did participate in said treaty and actually agreed to the same and signed the same.

VII.

That the District Court erred in holding and finding that the decision and action of the Indian [105] Council of 1922 as to recognition and adoption of members was in itself authoritative, notwithstanding the fact that said proceedings of said Council were in no part approved by the Secretary of the Interior of the United States of America.

VIII.

That the District Court erred in holding and finding that under the Act of June 7, 1897, where an Indian woman who was recognized tribally at that time and married to a white husband has children, that the offspring of said children are entitled to receive allotments under the law.

IX.

That the District Court erred in holding and finding that the rights of children of a white man and an Indian woman in tribal property embraces the children of the mother who was living at the time of the passage of the Act of June 7, 1897, and was not then recognized by the tribe as one of its members.

X.

That the District Court erred in holding and finding that the plaintiffs and their parents had been prop-

erly adopted into the Quinaielt tribe by the adoption action of the Indian Council of said tribe of 1912 when said action was void for not having been approved by the Secretary of the Interior of the United States.

XI.

That the District Court erred in holding and finding that the plaintiffs who were born of a marriage prior to 1897 between a white man and a woman of Indian blood who was living on June 7, 1897, and not then recognized as a member of the tribal Indians of the Quinaielt Reservation were entitled to allotment thereon. [106]

XII.

That the District Court erred in entering decree herein on December 24, 1928, awarding allotments to the plaintiffs herein when the evidence adduced at the time of trial herein was insufficient to sustain said decree and exceptions to said decree having been timely noted.

XIII.

That the District Court erred in holding and decreeing that the defendant, its officers and agents, are directed to issue to the plaintiffs certificates of allotment of the lands claimed to be selected by said plaintiffs.

ANTHONY SAVAGE,
United States Attorney.
JOHN T. McCUTCHEON,
Assistant United States Attorney.
TOM DeWOLFE,
Assistant United States Attorney.

[Endorsed]: Received a copy of the within Assignments this 19th day of March, 1929.

STUART H. ELLIOTT &
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, *Northern* Division, March 20, 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [107]

United States District Court, Western District of Washington, Southern Division.

No. 307-E.

ROSA PEERS PICKERNOLL, et al.,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

ORDER ALLOWING APPEAL.

On the application of the defendant herein, it is hereby Ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and decree heretofore entered and filed herein on the 24th day of December, 1928, be and the same is hereby allowed.

It is further ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United

States Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 20th day of March, 1929.

J. STANLEY WEBSTER,
Judge.

[Endorsed]: Received a copy of the within Order this 20th day of March, 1929.

STUART H. ELLIOTT &
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, March 20, 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [108]

United States District Court, Western District of Washington, Southern Division.

No. 309-E.

MARY FRANCIS PROVOE, LAURA M. BROWN, JOHN W. PROVOE, FRANK M. PROVOE, ROSA H. GARRARD, SARAH SPENCER, ISABELLE R. RAINEY, WILLIAM A. PROVOE, and RAYMOND A. PROVOE,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

COMPLAINT.

To the Honorable Judges of the Above Entitled Court; Sitting in Equity:

The plaintiffs complain of the defendant and for cause of action allege and say:

I.

That the plaintiffs are, and at all times since their birth have been persons of part Indian blood, over the age of 21 years, and members of the Quinaielt tribe of Indians, and reside in the State of Washington within this District.

II.

That the said Mary Frances Provoe, as before stated is an Indian, being a member of an associated and affiliated *ban* of Indians of the Quinaielt tribe, and a fish-eating Indian of the Pacific Coast in Western Washington, and is the mother of the plaintiffs, Laura M. Brown, John W. Provoe, Frank M. Provoe, Rosa H. Garrard, Sarah Spencer, Isabelle R. Rainey, William A. Provoe, and Raymond A. Provoe. The father of the above named children, and the husband of the said Mary Frances Provoe is named David Provoe, and he is also an Indian by blood. [109]

III.

That all of the plaintiffs were born in Southwestern Washington within this District, and have resided in said locality their entire lifetime, all of which time said plaintiffs have continuously lived as Indians, associating and affiliating with the Quinaielt Indians and associated and affiliated bands and tribes of the Quinaielt Indian Reservation. That about the year 1912 said plaintiffs in response to a notice sent out by the superintendent of the Quinaielt Indian Reservation Washington, appeared before the tribal council of said

Quinaielt tribe, at Taholah, Washington, upon said Quinaielt Indian Reservation, and were then and there by said tribe recognized as belonging to, and being a part of said Quinaielt tribe of Indians. That plaintiffs have many blood relatives allotted upon said Reservation, among whom are: Mary Sampson Johns, Lafayette Kindred, Kate Kindred Thomas, Fannie Delamater, Isaac Bastian, and Ida Gill.

IV.

That the plaintiffs as above set forth are all of one family, being as herein set forth Mary Frances Provoe and her children, and by reason of this fact, and the facts as hereinafter set forth relative to the selection and denial of certain allotments of land upon said Quinaielt Reservation under respectively the same conditions and like circumstances, these plaintiffs have a common interest in the subject matter of this action, and are affected in a similar manner.

V.

That the grounds upon which the Court's jurisdiction rests are as follows: That the plaintiffs are Indians and [110] members of the Quinaielt tribe of Indians, and are entitled under the treaty made and entered into between the United States and the Quinaielt Indians, and other bands and tribes of Indians, and under the alloting acts of the United States to an allotment of at least 80 acres, each, of land upon the Quinaielt Indian Reservation in the State of Washington and within this District. The jurisdiction of the Court further depends upon the Acts of August 15, 1895 (28 Stat. L., 305), as amended by the Act of February 6, 1901 (31 Stat. L., 760), giving the right

to Indians to bring suits against the United States to establish their rights to an allotment of land.

VI.

That about the year 1912 the plaintiffs applied to the defendant its officers and agents for an allotment of 80 acres of land, each, upon the said Quinaielt Indian Reservation, and were informed by the defendant, more particularly its superintendent of the said Quinaielt Indian Reservation, that while they were each entitled to an allotment of land no provision or appropriation had been made for the allotment of the remaining land upon said reservation, it being timber land, and upon several occasions subsequent to said time, plaintiffs applied for allotments of land, but were each time informed that while they were entitled to allotments, no provision or appropriation had been made for allotment, nor had any alloting agent been designated by the defendant to make allotments upon said reservation.

That about a year and a half ago a Special Alloting Agent was sent by the defendant, more particularly [111] the Secretary of the Interior to said Quinaielt Indian Reservation for the purpose of alloting land upon said reservation to Indians entitled thereto, and said plaintiffs in due course, and in accordance with law, regularly proceeded to make selections for allotment upon said Quinaielt Indian Reservation, which selections for allotment are described in words and figures as follows, towit:

Mary Frances Provoe—N/2 of SW/4 Sec 9 T 22 N.R. 12 W W M

William A. Provoe—SE/4 of SE/4 Sec 11 and the NE/4 of NE/4 Sec 14 T 22 N R 12 W W M

Raymond A. Provoe—W/2 of SE/4 Sec 28 T 23 N R 10 W W M

Laura M. Brown—W/2 of SW/4 Sec 21 T 21 N R 11 W W M

John W. Provoe—S/2 of NE/4 Sec 21 T 21 N R 11 W W M

Frank M. Provoe—W/2 of NW/4 Sec 17 T 21 N R 11 W W M

Rosa H. Garrard—Lots 1 and 2 Sec 19 T 23 N R10 W W M

Sarah Spencer—S/2 of SW/4 Sec 9 T 22 N R 12 W W M

Isabelle R. Rainey—N/2 of SE/4 Sec 9 T 22 N R 11 W W M

VII.

That thereafter plaintiffs are informed and believe, said selections were regularly forwarded to the Secretary of the Interior at Washington, D. C., in accordance with law, and each and every step was regularly completed for the actual approval and granting of said allotments and the issuance of the necessary patents therefore except only the approval of the Secretary of the Interior. That recently the defendant, more [112] particularly the Secretary of the Interior and the Commissioner of Indian Affairs, neglected refused and declined to allot to said plaintiffs the identical allotments herein described or any allotments of land upon the Quinaielt Indian Reservation whatsoever. That said denial and refusal of plaintiffs' rights to allotments was for no reason known to plaintiffs,

but that such refusal and denial is arbitrary and without reason, and in no manner justified, and is a denial of a right of said plaintiffs as set forth by the Acts of Congress of the United States, its laws and treaties, and a refusal to perform a duty of said defendant as set forth in said laws and treaties.

VIII.

That said allotments selected by plaintiffs are unallotted, unimproved, vacant Indian lands capable of being cleared and cultivated, duly surveyed by the United States Government and subject to selection and allotment under the laws of the United States.

IX.

That notwithstanding all of the facts hereinbefore alleged, the defendant, its officers and agents, have wrongfully failed, neglected, and refused to allot the said lands to the plaintiffs herein, or to issue to said plaintiffs any trust or fee patent therefor, and have denied and excluded, and still deny and exclude plaintiffs from said lands and have refused and still refuse to allow said plaintiffs to go upon or reside upon said lands or any portion thereof. [113]

X.

That the said plaintiffs are entitled to have said lands so selected by them allotted to them, and desire that the same be allotted to them, and that their rights be recognized and that they be permitted to go upon, live upon, cultivate and improve said lands as their homes.

XI.

That plaintiffs waive answer under oath.

WHEREFORE, plaintiffs pray judgment as follows:

I.

That a judgment and decree be entered herein as provided by law in favor of these claimants to said 80 acre tracts of land hereinbefore described, and that said decree be properly certified by the Secretary of the Interior, and that the plaintiffs be awarded said lands as their allotments and that they be adjudged and decreed to have full right, power and authority to go upon live upon, cultivate and improve said lands as their homes, in all *resepcts* as provided by law.

II.

That the plaintiffs have all other and further relief as is equitable and just.

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Solicitors for Plaintiffs.

State of Washington,
County of Grays Harbor,—ss.

RAYMOND A. PROVOE, being first duly sworn on oath deposes and says: That he is one of the plaintiffs in the above entitled action; that he has read the foregoing Bill of Complaint, knows the contents thereof, and that the same is true as he verily believes.

RAYMOND A. PROVOE. [114]

Subscribed and sworn before me this 21 day of January 1927.

[Notary Seal] CHAS. L. VAUGHAN,
Notary Public in and for the State of Washington,
residing at Oakville.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Jan. 21, 1926.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [115]

United States District Court, Western District of Washington, Southern Division.

No. 309-E.

MARY FRANCIS PROVOE, LAURA M. BROWN, JOHN W. PROVOE, FRANK M. PROVOE, ROSA H. GARRARD, SARAH SPENCER, ISABELLE R. RAINEY, WILLIAM A. PROVOE, and RAYMOND A. PROVOE,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

AMENDED ANSWER.

Comes now the above named defendant by its attorneys and in answer to the plaintiffs' Bill of Complaint, admits, denies and alleges as follows:

I.

In answer to paragraph I of plaintiffs' Bill of Complaint, defendant admits that the plaintiffs are of part Indian blood, but denies that they are of Quinaielt or Quileute, or of any of the tribes affiliated with them in the Treaties of July 1, 1855 and January 25, 1856 (12 Stat. L. 971).

II.

In answer to paragraph II of plaintiffs' Bill of Complaint, defendant denies each and every allegation therein contained.

III.

In answer to paragraphs III and IV of plaintiffs' Bill of Complaint, the defendant, for lack of information, knowledge or belief, denies each and every allegation therein contained.

IV.

In answer to paragraph V, defendant admits the jurisdiction of the Court, but denies each and every other allegation therein contained. [116]

V.

Answering paragraph VI of plaintiffs' complaint, defendant admits that a special allotting agent was sent by the Secretary of the Interior to the said Quinaielt Indian Reservation for the purpose of allotting lands upon said Reservation to Indians entitled thereto, and denies each and every other allegation therein contained.

VI.

In answer to paragraph VII of plaintiffs' complaint, defendant denies each and every allegation therein contained.

VII.

Defendant admits paragraph VIII of plaintiffs' Bill of Complaint.

VIII.

In answer to paragraph IX, defendant admits the acts alleged therein, but denies that said acts are unlawful.

IX.

In answer to paragraph X, defendant denies the same.

WHEREFORE, Having answered plaintiffs' Bill of Complaint, defendant prays that said action be dismissed, and that it have and recover its costs therein.

THOS. P. REVELLE,
United States Attorney.

DAVID L. SPAULDING,
Assistant United States Attorney. [117]

United States of America,
Western District of Washington,
Southern Division,—ss.

DAVID L. SPAULDING, being first duly sworn on oath, deposes, and says: That he is an Assistant United States Attorney for the Western District of Washington, and makes this verification for and on behalf of the United States of America, defendant herein; that he has read the foregoing Answer; knows

the contents thereof, and that the same is true as he verily believes.

DAVID L. SPAULDING.

Subscribed and sworn to before me this 5th day of Nov. 1927.

ALINE ESLER,

Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Nov. 9, 1927.

ED. M. LAKIN,
Clerk.

By E. R.,
Deputy. [118]

In the United States District Court for the Western District of Washington, Southern Division.

No. 309-E.

MARY FRANCIS PROVOE, LAURA M. BROWN, FRANK M. PROVOE, JOHN W. PROVOE, ROSA H. GARRARD, SARAH SPENCER, ISABELLE R. RAINEY, WILLIAM A. PROVOE, and RAYMOND A. PROVOE,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

DECREE.

This cause came on to be heard at this term, the plaintiffs Mary Francis Provoe, Laura M. Brown,

Frank M. Provoe, Rosa H. Garrard, Sarah Spencer, Isabelle R. Rainey, William A. Provoe and Raymond A. Provoe appearing by their counsel Stuart H. Elliott and H. G. & Dix H. Rowland, and the defendant appearing by its counsel Anthony Savage, U. S. District Attorney, Seattle, Wash., David Spaulding, Asst. U. S. District Attorney, Seattle, Wash., John T. McCutcheon, Asst. U. S. District Attorney, Tacoma, James T. Rahily, Associate Counsel, Washington, D. C.; and the Court having taken the matter under advisement and rendered his memorandum decision herein after said cause had been submitted to the Court upon written briefs, and thereupon upon consideration thereof it is

ORDERED, ADJUDGED AND DECREED:

That plaintiffs Mary Francis Provoe, Laura M. Brown, Frank M. Provoe, Rosa H. Garrard, Sarah Spencer, Isabelle R. Rainey, William A. Provoe, and Raymond A. Provoe be and they [119] are entitled to the lands heretofore selected by them, situate upon the Quinaielt Indian Reservation, within this district, Grays Harbor County, in the State of Washington, to-wit:

Mary Francis Provoe—The North half of the Southwest quarter of Section Nine (9), Township Twenty-two (22) North, Range Twelve (12) West, Willamette Meridian.

William A. Provoe—The southwest quarter of the Southeast quarter of Section Eleven (11) and the Northeast quarter of the Northeast quarter of Section Fourteen (14), Township Twenty-

two (22) North, Range Twelve (12) West, Willamette Meridian.

Raymond A. Provoe—The West half of the Southeast quarter of Section Twenty-eight (28), Township Twenty-three (23) North, Range Ten (10) West, Willamette Meridian.

Laura M. Brown—The West half of the Southwest quarter of Section Twenty-one (21), Township Twenty-one (21) North, Range Eleven (11) West, Willamette Meridian.

Frank M. Provoe—The West half of the Northwest quarter of Section Seventeen (17), Township Twenty-one (21) North, Range Eleven (11) West, Willamette Meridian.

Rosa H. Garrard—Lots 1 and 2, Section Nineteen (19) Township Twenty-three (23) North, Range Ten (10) West, Willamette Meridian.

Sarah Spencer—The South half of the Southwest quarter of Section Nine (9), Township Twenty-two (22) North, Range Twelve (12) West, Willamette Meridian.

Isabelle R. Rainey—The North half of the Southeast quarter of Section Nine (9), Township Twenty-two (22) North, Range Eleven (11) West, Willamette Meridian.

as allotments to be held and owned by said plaintiffs, in all respects as provided by law. It is further

ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents, be and they are hereby ordered and directed to issue to said plaintiffs, certificates of allotment of said lands heretofore described, said certificates of allotment to be in effect

and to award to said plaintiffs all of the rights to which said plaintiffs [120] are entitled under and by virtue of the laws of the United States. It is further

ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents and all persons claiming by, through or under them, be and they are hereby forever barred and estopped from ever claiming or asserting that said plaintiffs, their heirs, executors, administrators and assigns, are not entitled to said land as and for their allotment, with full right to use, build upon, clear, improve, and occupy the same in all respects as provided by law; to all of which defendant excepts, and its exception is allowed. It is further

ORDERED, ADJUDGED AND DECREED that inasmuch as John W. Provoe has died since the beginning of this action, that he be not granted any allotment of land upon the Quinaielt Indian Reservation, but that said action as to him be and the same is hereby *doscontinued,* without prejudice to his heirs to apply for said allotment in proper proceeding.

Done in open court this 24th day of December, A. D. 1928.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: O. K. as to form.

D. SPAULDING,
Asst. U. S. Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 24, 1928.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [121]

United States District Court, Western District of Washington, Southern Division.

No. 309-E.

MARY FRANCIS PROVOE, et al.,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

ASSIGNMENTS OF ERROR.

Comes now the above named defendant, the United States of America, by and through its attorneys, Anthony Savage, United States Attorney for the Western District of Washington, and John T. McCutcheon and Tom DeWolfe, Assistant United States Attorneys for said District, and James T. Rahily, Associate Counsel, and respectfully submits the following Assignments of Error upon which it relies in support of its appeal from the judgment and decree entered on the 24th day of December, 1928, in said cause, in the District Court of the United States for the Southern Division of the Western District of Washington, and under which Assignments of Error

said appellant seeks reversal of the decision, judgment and decree of said Court:

I.

That the District Court erred in holding and finding that the land selected for allotment by the plaintiffs was subject to selection and allotment under the laws of the United States, and that the plaintiffs are lawfully entitled to have such land allotted to them.

II.

That the District Court erred in holding and finding that the officers and agents of the United States of America have wrongfully failed, neglected and refused to allot the said land to the said plaintiffs, or to issue to [124] plaintiffs any trust or fee patent therefor.

III.

That the District Court erred in adjudging that the plaintiffs were entitled to a decree adjudging and decreeing that the said plaintiffs are entitled to the land selected for their allotment, and that the plaintiffs are entitled to have said land allotted to them by the defendant, its officers and agents.

IV.

That the District Court erred in concluding, holding, and finding that the plaintiffs are entitled to a decree estopping the defendant, its officers and agents from hereafter interfering with the plaintiffs in their rights to possession of said lands and their rights to improve the same, and estopping the defendant from

hereafter claiming or asserting that said plaintiffs are not entitled to go upon, clear, improve, and build upon said land.

V.

That the District Court erred in holding and finding that the general allotment statutes and acts do not apply and that the Act of March 4, 1911, is a special allotment act, when said Act of March 4, 1911, expressly provides that allotments are made under the provisions of the allotment laws of the United States.

VI.

That the District Court erred in holding and finding that the Indian tribes who refused to become parties to the Treaty of July 1, 1855, and January 23, 1856, were affiliated therein with the Indian tribes that did participate in said Treaty and actually agreed to the same and signed the same. [124A]

VII.

That the District Court erred in holding and finding that the decision and action of the Indian Council of 1922 as to recognition and adoption of members was in itself authoritative, notwithstanding the fact that said proceedings of said Council were in no part approved by the Secretary of the Interior of the United States of America.

VIII.

That the District Court erred in holding and finding that under the Act of June 7, 1897, where an Indian woman who was recognized tribally at that time and married to a white husband has children, that

the offspring of said children are entitled to receive allotments under the law.

IX.

That the District Court erred in holding and finding that the rights of children of a white man and an Indian woman in tribal property embraces the children of the mother who was living at the time of the passage of the Act of June, 1897, and was not then recognized by the tribe as one of its members.

X.

That the District Court erred in holding and finding that the plaintiffs and their parents had been properly adopted into the Quinaielt tribe by the adoption action of the Indian Council of said tribe in 1912 when said action was void for not having been approved by the Secretary of the Interior of the United States.

XI.

That the District Court erred in holding and finding that the plaintiffs who were born of a marriage prior to 1897 between a white man and a woman of Indian blood who was living on June 7, 1897, and not then recognized as a [125] member by the tribal Indians of the Quinaielt Reservation were entitled to allotments thereon.

XII.

That the District Court erred in entering decree herein on December 24, 1928, awarding allotments to the plaintiffs herein when the evidence adduced at the time of trial herein was insufficient to sustain said

decree and exceptions to said defree having been timely noted.

XIII.

That the District Court erred in holding and decreeing that the defendant, its officers and agents are directed to issue to the plaintiffs, certificates of allotment of the lands claimed to be selected by said plaintiffs.

ANTHONY SAVAGE,
United States Attorney.

JOHN T. McCUTCHEON,
Assistant United States Attorney.

TOM DeWOLFE,
Assistant United States Attorney.

[Endorsed]: Received a copy of the within Assignments this 19th day of March, 1929.

STUART H. ELLIOTT
and
H. G. and DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar. 20, 1928.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [126]

United States District Court, Western District of Washington, *Northern* Division.

No. 309-E.

MARY FRANCIS PROVOE, et al.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER ALLOWING APPEAL.

On the application of the defendant herein it is hereby Ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and decree heretofore entered and filed herein on the 24th day of December, 1928, be and the same is hereby allowed.

It is further ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

DONE IN OPEN COURT this 20th day of March, 1929.

J. STANLEY WEBSTER,
Judge.

[Endorsed]: Received a copy of the within Order this 20th day of Mar. 1929.

STUART H. ELLIOTT
and
H. G. and DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar. 20, 1929.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [127]

United States District Court, Western District of Washington, Southern Division.

No. 312E

LULA M. ELLIOTT, SOPHIE M. ELLIOTT, CAROLYN M. ELLIOTT, MARION E. ELLIOTT, EMMA S. ELLIOTT, and NORMA C. ELLIOTT, Minors, by J. H. ELLIOTT, guardian ad litem,

Plaintiffs.

vs.

THE UNITED STATES OF AMERICA,

Defendant.

BILL OF COMPLAINT.

To the Honorable Judges of the Above Entitled Court, sitting in Equity:

The plaintiffs complain of the defendant, and for cause of action allege and say:

I.

That the plaintiffs are and at all times since their birth have been persons of part Indian blood, and

members of the Quinaielt Tribe of Indians of Grays Harbor County, Washington within this District, and that the said J. H. Elliott was duly and in accordance with law appointed guardian ad litem of the said plaintiffs by the above entitled court upon the 1st day of February 1927, and he duly qualified as guardian ad litem, and is now acting as such upon the behalf of the plaintiffs herein.

II.

That the father of said plaintiffs is named J. H. Elliott, and he is a duly enrolled and allotted Indian of the Quinaielt Indian Reservation Washington, and the mother of the said plaintiffs is named Josephine Johnson Elliott, and she is a duly enrolled and allotted Indian of the Quinaielt Indian Reservation, Washington, within this District, and that all of the above named minor children the plaintiffs [128] herein with the exception of the said Norma C. Elliott were born and reared in Wahkiakum County, Washington within this District, and that the family have made their home at said place the greater part of their lifetime. That the said J. H. Elliott is a fisherman by occupation, and fishes in the Columbia River on both banks thereof, and he at present makes his home in Astoria Oregon until such time as he shall remove to the Quinaielt Indian Reservation where he and the mother of said minor children have been recently given an allotment of land.

III.

That the defendant has recognized many members of plaintiff's family, and have enrolled and allotted

many members of said family among whom, are the father of the plaintiff's, J. H. Elliott, the mother of said plaintiffs Josephine Johnson Elliott, the maternal grandmother of said plaintiff's, Adeline Lohre, the paternal grandmother, Agnes Elliott, the following named maternal uncles and aunts, Louise E. Henry, George R. Elliott, J. GrantElliott, Edmund C. Elliott, Eliza L. Miles, Grace Heiner, Charles G. Elliott, and Williams A. Elliott, the following named maternal aunts, Daisy Walters Borg, Ellen Baker, Sophia Millett, Frances James, Eleanor James, and Cora Walters John, Sophia Millett, and numerous cousins, and more distant relatives.

IV.

That the plaintiffs as above set forth are full blood sisters and that by reason of this fact and the facts hereinafter set forth relative to the selection and denial of certain allotments of land upon the Quinaielt Indian Reservation, under respectively the same conditions and like [129] circumstances, these plaintiffs have a common interest in the subject matter of this action and are affected in a *simular* manner.

V.

That the ground upon which the Court's jurisdiction rests are as follows: That the plaintiffs are Indians and members of the Quinaielt Tribe of Indians, and are entitled under the treaty made and entered into between the United States and the Quinaielt Indians and other bands of Indians, and under the allotment acts of the United States, to an allotment of at least 80 acres, each, of land upon the said Quin-

aielt Indian Reservation in the State of Washington within this District. The jurisdiction of the Court further depends upon the Acts of August 15, 1894 (28 Stat. L., 305) as amended by the Act of February 6, 1901 (31 Stat. L., 760) giving the right to Indians to bring suits against the United States to establish their rights to an allotment of land.

VI.

That about two years ago a Special Alloting Agent was sent by the defendant, more particularly the Secretary of the Interior to said Quinaielt Indian Reservation for the purpose of alloting land upon said reservation to Indians entitled thereto, and said plaintiffs in due course and in accordance with law, regularly proceeded to make selections for allotments of land upon said Quinaielt Reservation, which said selections for allotment are described in words and figures as follows: to-wit:

Lula M. Elliott—N/2 of NE/4 Sec 16 T 21 N R 11 W W M in Washington [130]

Sophie M. Elliott,—S/2 of NW/4 Sec 10 T 21 N R 12 W W M in Washington.

Carolyn M. Elliott,—E/2 of NE/4 Sec 17 T 22 N R 12 W W M in Washington.

Marion E. Elliott,—E/2 of SE/4 Sec 17 T 22 N R 12 W W M in Washington.

Emma S. Elliott,—S/2 of NW/4 Sec 16 T 22 N R 12 W W M in Washington.

Norma C. Elliott,—N/2 of SW/4 Sec 16 T 22 N R 12 W W M in Washington.

VII.

That thereafter, plaintiffs are informed and believe, said selections were regularly forwarded to the Secretary of the Interior at Washington D. C. in accordance with law, and each and every step was regularly completed for the actual approval and granting said allotments and the issuance of the necessary patents therefor except only the approval of the Secretary of the Interior. That recently the defendant, more particularly the Secretary of the Interior and the Commissioner of Indian Affairs neglected, refused and declined to allot to said plaintiffs the identical allotments herein described or any allotments of land upon the Quinaielt Reservation whatsoever. That said denial and refusal of plaintiff's rights to allotment was for no reason known to plaintiffs, but that such refusal and denial is arbitrary and without reason and in no manner justified, and is a denial of a right of said plaintiffs as set forth by the acts of Congress of the United States, its laws and treaties, and a refusal to perform a duty of said defendant as set forth in said laws and treaties.

VIII.

That said allotments selected by the plaintiffs [131] herein are unallotted, unimproved, vacant Indian lands capable of being cleared and cultivated, duly surveyed by the United States Government and subject to selection and allotment under the laws of the United States.

IX.

That notwithstanding all the facts hereinbefore alleged, defendant, its officers and agents, have wrong-

fully failed, neglected and refused to allot the said lands to the plaintiffs herein, or to issue to said plaintiffs any trust or fee patent therefor, and have denied and excluded, and still deny and exclude plaintiffs herein from said lands and have refused and still refuse to let said plaintiffs go upon or reside upon said lands or any portion thereof.

X.

That said plaintiffs are entitled to have said lands so selected by them allotted to them, and desire that the same be allotted to them and that their rights be recognized, and that they be permitted to go upon, live upon, cultivate and improve said lands as their homes.

XI.

That plaintiffs waive answer under oath.

WHEREFORE plaintiffs pray judgment as follows:—

I.

That a judgment and decree be entered herein as provided by law in favor of these claimants to said 80 acre tracts of land hereinbefore described, and that said decree be properly certified by the Secretary of the Interior, and that plaintiffs be awarded said lands as their allotments and that they be adjudged and decreed to have full right, power and authority to go upon, live upon, cultivate and [132] improve said lands as their homes, in all respects as provided by law.

II.

That the plaintiffs have all other and further relief as is equitable and just.

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Solicitors for plaintiffs.

State of Oregon,
County of Clatsop,—ss.

J. H. ELLIOTT, being first duly sworn deposes and says: That he is the duly appointed and qualified guardian ad litem of the plaintiffs above named; that he makes this verification for and on behalf of said minors as such guardian ad litem; that he has read and knows the contents of the foregoing Bill of Complaint, and that the statements therein contained are true as he verily believes.

J. H. ELLIOTT.

Subscribed and sworn before me this 17 day of January 1927.

[Notary Seal] O. A. WIOKKALA,

Notary Public in and for the State of Oregon, residing at Astoria, Oregon

[Endorsed]: Filed in the United States District Court Western District of Washington Southern Division Feb. 1, 1929

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [133]

United States District Court, Western District of Washington, Southern Division.

NO. 312 E

LULU M. ELLIOTT, SOPHIE M. ELLIOTT, CAROLYN M. ELLIOTT, MARION E. ELLIOTT, EMMA S. ELLIOTT, and NORMA C. ELLIOTT, Minors, by J. H. ELLIOTT, guardian ad litem,

Plaintiffs.

vs.

THE UNITED STATES OF AMERICA,

Defendant.

AMENDED ANSWER.

Comes now the above named defendant by its attorney, and by way of amended answer to plaintiffs' bill of complaint, admits denies and alleges as follows:

I.

Referring to paragraph I of plaintiffs' bill of complaint, defendant *denies* that plaintiffs are members of the Quinaielt Tribe of Indians and *admits* each and every other material allegation contained therein.

II.

Referring to paragraphs II, III, IV defendant *admits* the same.

III.

Referring to paragraph V defendant *admits* the jurisdiction of the above entitled court and *denies* each and every other material allegation therein contained.

IV.

Referring to paragraph VI defendant *admits* the same. [134]

V.

Referring to paragraph VII defendant *admits* that the Secretary of the Interior and the Commissioner of Indian Affairs has refused to allot lands of the Quinaielt Indian Reservation to the plaintiffs; defendant denies each and every other material allegation therein contained.

VI.

Referring to paragraph VIII defendant *admits* the same.

VII.

Referring to paragraph IX defendant *admits* that it has refused to allot lands on the Quinaielt Indian Reservation to the plaintiffs herein, but denies that said refusal was wrongful.

VIII.

Referring to paragraph X defendant *denies* the same.

WHEREFORE, having answered plaintiffs' bill of complaint, defendant prays that said action be dismissed, and that it have and recover its costs herein.

THOS. P. REVELLE,
United States Attorney.

DAVID L. SPAULDING,
Assistant United States Attorney.

United States of America
Western District of Washington
Southern Division,—ss.

DAVID L. SPAULDING, being first duly sworn, on oath deposes and says: That he is an Assistant United States Attorney for the Western District of Washington, and makes this verification for and on behalf of the United States of America, defendant herein; that he has read the foregoing amended Answer; knows the contents thereof and believes the same to be true.

DAVID L. SPAULDING.

Subscribed and sworn to before me this 10th day of November, 1927.

[Seal] ALINE ESLER,

Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Nov 11 1927.

ED. M. LAKIN,
Clerk.

By ER,
Deputy. [135]

United States District Court, Western District of Washington, Southern Division.

No. 312-E

LULA M. ELLIOTT, et al,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

STIPULATION FOR AMENDMENT OF COMPLAINT.

IT IS HEREBY STIPULATED by and between the plaintiffs and the defendant above named, by their counsel, that the bill of complaint in said action may be amended in the following particulars:—

That paragraph VI may be amended so that after the words, Lula M. Elliott the words, "N/2 of NE/4 Sec 16 T 21 N R 11 W W M in Washington" may be changed to: "Lot 4 and the southwest quarter of northwest quarter of Sec. 3, Tp. 22 N., R. 11 W., W. M."

And after the words, Sophie M. Elliott the words, "S/2 of NW/4 Sec 10 T 21 N R 12 W W M in Washington," may be changed to: "North half of northwest quarter of Sec. 22, Tp. 22 N., R. 11 W., W. M."

And after the words, "Carolyn M. Elliott, the words, "E/2 of NE/4 Sec 17 T 22 N R 12 W W M in Washington," may be changed to: "West half of

southeast quarter of Sec. 1, Tp. 22 N., R. 11 W., W. M."

for the reason that by and with the consent of the defendant said plaintiffs in this paragraph mentioned have made the selections herein mentioned to be placed in the amended complaint in lieu of the tracts of land described in the bill of complaint as selected by them.

Dated this 10th day of January, 1928.

STUART H. ELLIOTT,

H. G. & DIX H. ROWLAND,

Attorneys for plaintiffs.

THOS. P. REVELLE,

DAVID L. SPAULDING,

Attorneys for Defendant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Jan 10 1928.

ED. M. LAKIN,

Clerk.

By Lakin, [136]

In the United States District Court for the Western District of Washington, Southern Division.

No. 312-E

LULA M. ELLIOTT, SOPHIE M. ELLIOTT, CAROLYN M. ELLIOTT, MARION E. ELLIOTT, EMMA S. ELLIOTT, and NORMA C. ELLIOTT, Minors, by J. H. ELLIOTT, guardian ad litem,

Plaintiffs.

vs.

THE UNITED STATES OF AMERICA,

Defendant.

DECREE.

This cause came on to be heard at this term, the plaintiffs Lula M. Elliott, Sophie M. Elliott, Carolyn M. Elliott, Marion E. Elliott, Emma S. Elliott, and Norma C. Elliott, by J. H. Elliott, guardian ad litem, appearing by their counsel Stuart H. Elliott and H. G. and Dix H. Rowland, and the defendant appearing by its counsel Anthony Savage, U. S. District Attorney, Seattle, Washington, David Spaulding, Assistant U. S. District Attorney, Seattle, Washington, John T. McCutcheon, Assistant U. S. District Attorney, Tacoma, James T. Rahily, Associate Counsel, Washington, D. C.; and the court having taken the matter under advisement and rendered his memorandum decison herein after said cause had been submitted to the court upon written briefs, and thereupon upon consideration thereof it is

ORDERED, ADJUDGED AND DECREED:

That plaintiffs Lula M. Elliott, Sophie M. Elliott, Carolyn M. Elliott, Marion E. Elliott, Emma S. Elliott, and Norma C. Elliott be and they are hereby entitled to the lands heretofore selected by them, situate upon the Quinaielt Indian Reservation, within [137] this District, in Grays Harbor County, in the State of Washington, towit:

Lula M. Elliott—The North half of the Northeast Quarter of Section Sixteen (16), in Township Twenty-one (21) North, Range Eleven (11) West of the Willamette Meridian.

Sophie M. Elliott—The West Half of the Northeast Quarter of Section Sixteen (16), in Township Twenty-two (22) North, Range Eleven (11) West of the Willamette Meridian.

Carolyn M. Elliott—The East Half of the Northeast Quarter of Section Sixteen (16), in Township Twenty-two (22) North, Range Eleven (11) West of the Willamette Meridian.

Marion M. Elliott—Lot Two (2) and the Southwest Quarter of the Northwest Quarter of Section Five (5) in Township Twenty-two (22) North, Range Twelve (12) West of Willamette Meridian.

Emma S. Elliott—The South Half of the Northwest Quarter of Section Sixteen (16), in Township Twenty-two (22) North, Range Twelve West of the Willamette Meridian.

Norma C. Elliott—The North Half of the Southwest Quarter of Section Sixteen (16), in Township Twenty-two (22) North, Range Twelve (12) West of the Willamette Meridian.

as allotments to be held and owned by said plaintiffs, in all respects as provided by law.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents, be and they are hereby ordered and directed to issue to said plaintiffs, certificates of allotment of said lands heretofore described, said certificates of allotment to be in effect and to award to said plaintiffs all of the rights to which said plaintiffs are entitled under and by virtue of the laws of the United States.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents and all persons claiming by, through or under them, be and they are hereby forever barred and estopped from ever claiming or asserting that said plaintiffs, their heirs, executors, administrators and assigns, are not entitled to said la[illegible] as and for their allotment, with full right to use, build upon, clear, improve, and occupy the same in all respects as [138] provided by law, to all of which the defendant excepts and its exception is allowed.

Done in open court this 5th day of Feb. 1929.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, *Northern* Division, Feb 5 1929.

ED. M. LAKIN,
Clerk.

By E. R.,
Deputy. [139]

United States District Court, Western District of Washington, Southern Division.

No. 312-E

LULU M. ELLIOTT, et al,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

ASSIGNMENTS OF ERROR.

Comes now the above named defendant, the United States of America, by and through its attorneys, Anthony Savage, United States Attorney for the Western District of Washington, and John T. McCutcheon and Tom DeWolfe, Assistant United States Attorneys for said District, and James T. Rahily, Associate Counsel, and respectfully submits the following Assignments of Error upon which it relies in support of its appeal from the judgment and decree entered on the 5th day of February, 1929, in said cause, in the District Court of the United States for the Southern Division of the Western District of Washington, and under which Assignments of Error said appellant seeks reversal of the decision, judgment and decree of said Court:

I.

That the District Court erred in holding and finding that the lands selected for allotment by the plaintiffs were subject to selection and allotment under the laws of the United States, and that the plaintiffs are lawfully entitled to have such lands allotted to them.

II.

That the District Court erred in holding and finding that the officers and agents of the United States of America have wrongfully failed, neglected and refused to allot the said lands to the said plaintiffs, or to issue to [144] the plaintiffs any trust or fee patent therefor.

III.

That the District Court erred in adjudging that the plaintiffs were entitled to a decree adjudging and decreeing that the said plaintiffs are entitled to the lands selected for their allotments, and that the plaintiffs are entitled to have said lands allotted to them by the defendant, its officers and agents.

IV.

That the District Court erred in concluding, holding, and finding that the plaintiffs are entitled to a decree estopping the defendant, its officers and agents, from hereafter interfering with the plaintiffs in their rights to possession of said lands and their rights to improve the same, and estopping the defendant from hereafter claiming or asserting that said plaintiffs are not entitled to go upon, clear, improve, and build upon said lands.

V.

That the District Court erred in holding and finding that the general allotment statutes and acts do not apply and that the Act of March 4, 1911, is a special allotment act, when said Act of March 4, 1911, expressly provides that allotments are made

under the provisions of the allotment laws of the United States.

VI.

That the District Court erred in holding and finding that the Indian tribes who refused to become parties to the Treaty of July 1, 1855, and January 23, 1856, were affiliated therein with the Indian tribes that did participate in said Treaty and actually agreed to the same and signed the same. [145]

VII.

That the District Court erred in holding and finding that the decision and action of the Indian Council of 1922 as to recognition and adoption of members was in itself authoritative, notwithstanding the fact that said proceedings of said Council were in no part approved by the Secretary of the Interior of the United States of America.

VIII.

That the District Court erred in holding and finding that under the Act of June 7, 1897, where an Indian woman who was recognized tribally at that time and married to a white husband has children, that the offspring of said children are entitled to receive allotments under the law.

IX.

That the District Court erred in holding and finding that the rights of children of a white man and an Indian woman in tribal property embraces the children of the mother who was living at the time of the

passage of the Act of June 7, 1897, and was not then recognized by the tribe as one of its members.

X.

That the District Court erred in holding and finding that the plaintiffs and their parents had been properly adopted into the Quinaielt tribe by the adoption action of the Indian Council of said tribe of 1912 when said action was void for not having been approved by the Secretary of the Interior of the United States.

XI.

That the District Court erred in holding and finding that the plaintiffs who were born of a marriage prior to 1897 between a white man and a woman of Indian blood who was living on June 7, 1897, and not then recognized as a [146] member of the tribal Indians of the Quinaielt Reservation, were entitled to allotments thereon.

XII.

That the District Court erred in entering decree herein on February 5, 1929, awarding allotments to the plaintiffs herein when the evidence adduced at the time of the trial herein was insufficient to sustain said decree and exceptions to said decree having been timely noted.

XIII.

That the District Court erred in holding and decreeing that the defendant, its officers and agents, are directed to issue to the plaintiffs, certificates of al-

lotment of the lands claimed to be selected by said plaintiffs.

ANTHONY SAVAGE,
United States Attorney.

JOHN T. McCUTCHEON,
Assistant United States Attorney.

TOM DeWOLFE,
Assistant United States Attorney.

[Endorsed]: Received a copy of the within Assignments this 19th day of March 1929.

STUART H. ELLIOTT &
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar 20 1929.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [147]

United States District Court, Western District of Washington, Southern Division.

No. 312-E

LULA M. ELLIOTT, et al,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

ORDER ALLOWING APPEAL.

On the application of the defendant herein it is hereby ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and Decree heretofore entered and filed herein on the 5th day of February, 1929, be and the same is hereby allowed.

It is further ordered that a certified transcript of record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

DONE IN OPEN COURT this 20th day of March, 1929.

J. STANLEY WEBSTER,
United States District Judge.

[Endorsed]: Received a copy of the within Order this 20th day of Mar 1929.

STUART H. ELLIOTT &
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar 20 1929.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [148]

United States District Court, Western District of Washington, Southern Division.

No. 314-E.

LIZZIE ROLFSON, ALVIN SMITH, EUGENE SMITH, *JAUNITA* CHRISTOFFSON, and ROBERT ROLFSON, DONALD SMITH, VIVIAN FORDEN, Minors, by LIZZIE ROLFSON, Guardian ad Litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

BILL OF COMPLAINT.

To the Honorable Judges of the above entitled court, sitting in equity:

The plaintiffs complain of the defendant and for cause of action allege and say:

I.

That the plaintiffs are, and at all times since their birth have been persons of part Indian blood, members of the Quinaielt Tribe of Indians, and reside at and in Grays Harbor County, within this District.

II.

That the plaintiffs as before stated, are Quinaielt Indians, and have always been recognized as such by said Quinaielt Indians, that they belong to the Lower Chehalis branch of said Quinaielt Tribe, and that said plaintiffs belong to, and have associated and affiliated with the associated bands and tribes of fish-eating Indians of the Pacific Coast in Western Washington, and have for many years past made their home in the immediate proximity of the said Quinaielt Indian Reservation.

III.

That the plaintiff, Alvin Smith is a Quinaielt Indian and the father of the plaintiff, Donald Smith. That the [149] plaintiff, Vivian Forden, is the daughter of Juanita Christoffson. That Alvin Smith, Eugene Smith, Juanita Christoffson, and Robert Rolfson are the children of Lizzie Rolfson, and that the said Lizzie Rolfson was duly and in accordance with law appointed guardian ad litem of the plaintiffs, Robert Rolfson, Donald Smith, and Vivian Forden, by the above entitled court upon the 1st day of February 1927, and she duly qualified as guardian ad

litem, and is now acting as such upon the behalf of the above named minor plaintiffs herein.

IV.

That the plaintiffs as above set forth are all members of the same family, and by reason of this fact and the facts hereinafter set forth relative to the selection and denial of certain allotments of land upon the Quinaielt Indian Reservation, under respectively the same conditions and like circumstances these plaintiffs have a common interest in the subject matter of this action and are affected in a similar manner.

V.

That the ground upon which the Court's jurisdiction rests are as follows: That the plaintiffs are Indians and members of the Quinaielt Tribe of Indians, and are entitled under the treaty made and entered into between the United States and the Quinaielt Indians and other bands of Indians, and under the allotment acts of the United States to an allotment of at least 80 acres, each, of land upon the said Quinaielt Indian Reservation in the State of Washington within this District. The Jurisdiction of the Court further depends upon the Acts of August 15, 1894 [150] (28 Stat. L., 305) as amended by the Act of February 6, 1901 (31 Stat. L., 760) giving the right to Indians to bring suits against the United States to establish their rights to an allotment of land.

VI.

That about two years ago a Special Alloting Agent was sent by the defendant, more particularly the

Secretary of the Interior to said Quinaielt Indian Reservation for the purpose of alloting land upon said reservation to Indians entitled thereto, and said plaintiffs in due course and in accordance with law, regularly proceeded to make selections for allotments of land upon said Quinaielt Reservation, which said selections for allotment are described in words and figures as follows; to-wit:

Lizzie Rolfson—N/2 of SE/4 Sec 36 T 23 N R 13 W W M in Washington.

Alvin Smith—SW/4 of NW/4 and the NW/4 SW/4 Sec 8 T 21 N R 11 W W. M in Washington.

Eugene Smith—SE/4 NW/4 and the NE/4 SW/4 Sec 8 T 21 N R 11 W W M in Washington.

Juanita Christoffson—E/2 of NE/4 Sec 16 T 22 N R 11 W W M in Washington.

Robert Rolfson—W/2 of NE/4 Sec 16 T 22 N R 11 W W M in Washington.

Donald Smith—Lot 1, and NW/4 SE/4 Sec 11 T 22 N R 11 W W M in Washington.

Vivian Forden—Lot 2 and SW/4 SE/4 Sec 11 T 22 N R 11 W W M in Washington.

VII.

That thereafter, plaintiffs are informed and believe said selections were regularly forwarded to the Secretary of the Interior at Washington D. C. in accordance with law, and each and every step was regularly taken and [151] *and* completed for the actual approval

and granting said allotments and the issuance of the necessary patents therefor except only the approval of the Secretary of the Interior. That recently the defendant, more particularly the Secretary of the Interior and the Commissioner of Indian Affairs neglected, refused and declined to allot said plaintiffs the identical allotments herein described or any allotments of land upon the Quinaielt Reservation whatsoever. That said denial and refusal of plaintiff's rights to allotment was for no reason known to plaintiffs, but such refusal and denial is arbitrary and without reason and in no manner justified, and is a denial of a right of said plaintiffs as set forth by the acts of Congress of the United States, its laws and treaties, and the refusal to perform a duty of said defendant as set forth in said laws and treaties.

VIII.

That said allotments selected by the plaintiffs herein are unallotted, unimproved, vacant Indian lands capable of being cleared and cultivated, duly surveyed by the United States Government, and subject to selection and allotment under the laws of the United States.

IX.

That notwithstanding all the facts hereinbefore alleged, defendant, its officers and agents, have wrongfully failed, neglected and refused to allot the said lands to the plaintiffs herein, or to issue to said plaintiffs any trust or fee patent therefor, and have denied and excluded, and still deny and *excluse* plaintiffs herein from said lands and have refused and still

refuse to let said plaintiffs go upon live upon, or reside upon said lands or any portion [152] thereof.

X.

That said plaintiffs are entitled to have said lands so selected by them allotted to them, and desire that the same be allotted to them and that their rights be recognized, and that they be permitted to go upon, live upon, cultivate and improve said lands as their homes.

XI.

That plaintiffs waive answer under oath.

WHEREFORE PLAINTIFFS PRAY JUDGMENT AS FOLLOWS:

I.

That a judgment and decree be entered herein as provided by law in favor of these claimants to said 80 acre tracts of land hereinbefore described, and that said decree be properly certified to the Secretary of the Interior and that plaintiffs be awarded said land as their allotments and that they be adjudged and decreed to have full rights, power and authority to go upon, live, upon, and cultivate and improve said lands as their homes, in all respects as provided by law.

II.

That the plaintiffs have all other and further relief as is equitable and just.

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Solicitors for Plaintiffs.

State of Washington,
County of Grays Harbor—

LIZZIE ROLFSON being first duly sworn on oath deposes and says; that she is one of the plaintiffs in [153] the above entitled action, that she has read the foregoing bill of complaint, knows the contents thereof, and that the same is true as she verily believes.

LIZZIE ROLFSON.

Subscribed and sworn before me this 26th day of January 1927.

[Seal] J. A. FAIRBAIRN,

Notary Public in and for the State of Washington, residing at Hoquiam, Wash.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Feb. 1, 1927.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [154]

United States District Court, Western District of Washington, Southern Division.

No. 314-E.

LIZZIE ROLFSON, ALVIN SMITH, EUGENE SMITH, JUANITA CHRISTOFFSON, and ROBERT ROLFSON, DONALD SMITH, VIVIAN FORDEN, Minors, by LIZZIE ROLFSON, Guardian ad Litem,

vs.

THE UNITED STATES OF AMERICA.

AMENDED ANSWER.

Comes now the above named defendant by its attorney, and by way of amended answer to plaintiffs' bill of complaint, admits, *denies* and alleges as follows:

I.

Referring to paragraph I of plaintiffs' bill of complaint, defendant *denies* plaintiffs are members of the Quinaielt tribe of Indians.

II.

Referring to paragraph II, defendant *admits* that plaintiffs had made their home in the proximity of said Quinaielt Indian Reservation; defendant *denies* each and every other material allegation therein contained.

III.

Referring to paragraph III, defendant *denies* that the plaintiff, Alvin Smith, or any of the plaintiffs, are

members of the Quinaielt Tribe of Indians; defendant *admits* each and every other material allegation therein contained.

IV.

Referring to paragraph IV, defendant *admits* the same. [155]

V.

Referring to paragraph V, defendant *admits* the jurisdiction of the above entitled court, but *denies* each and every other material allegation therein contained.

VI.

Referring to paragraph VI, defendant *admits* the same.

VII.

Referring to paragraph VII, defendant *admits* that the Secretary of the Interior and the Commissioner of Indian Affairs has refused to allot the described lands to said plaintiffs; defendant *denies* each and every other material allegation therein contained.

VIII.

Referring to paragraph VIII, defendant *admits* the same.

IX.

Referring to paragraph IX, defendant *admits* that it has refused to allot said lands to the plaintiffs, but *denies* that said refusal was wrongful.

X.

Referring to paragraph X, defendant denies the same.

WHEREFORE, having answered plaintiff's bill of complaint, defendant prays that said action be dismissed, and that it have and recover its costs herein.

THOS. P. REVELLE,
United States Attorney.
DAVID L. SPAULDING,
Assistant United States Attorney. [156]

United States of America,
Western District of Washington,
Southern Division—ss.

DAVID L. SPAULDING, being first duly sworn, on oath deposes and says: That he is an Assistant United States Attorney for the Western District of Washington and makes this verification for and on behalf of the United States of America, defendant herein; that he has read the foregoing Amended Answer, knows the contents thereof and believes the same to be true.

DAVID L. SPAULDING.

Subscribed and sworn to before me this 5th day of November, 1927.

[Seal] ALINE ESLER,
Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Nov. 11, 1927.

ED. M. LAKIN,
Clerk.
By E. R.,
Deputy. [157]

In the United States District Court for the Western District of Washington, Southern Division.

No. 314 E.

LIZZIE ROLFSON, ALVIN SMITH, EUGENE SMITH, JUANITA CHRISTOFFSON, and ROBERT ROLFSON, DONALD SMITH, VIVIAN FORDEN, Minors, by LIZZIE ROLFSON, Guardian ad Litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

DECREE.

This cause came on to be heard at this term, the plaintiffs Lizzie Rolfson, Alvin Smith and Eugene Smith appearing personally, and the plaintiff Juanita Christoffson appearing personally, and the plaintiffs Robert Rolfson, Donald Smith and Vivian Forden, minors, appearing by their guardian ad litem Lizzie Rolfson, and all of the plaintiffs appearing by their counsel Stuart H. Elliott, and H. G. & Dix H. Rowland, and the defendant appearing by its counsel Anthony Savage, U. S. District Attorney, Seattle, Wash., David Spaulding, Asst. U. S. District Attorney, Seattle, Wash., John T. McCutcheon, Asst. U. S. District Attorney, Tacoma, James T. Rahily, Associate Counsel, Washington, D. C.; and the court having taken the matter under advisement and rendered his memorandum decision herein after said

cause had been submitted to the court upon written briefs, and thereupon upon consideration thereof it is

ORDERED, ADJUDGED AND DECREED:

That plaintiffs Lizzie Rolfson, Alvin Smith and Eugene Smith be and they are hereby entitled to the lands heretofore selected by them, situate upon the Quinaielt [158] Indian Reservation, within this District, in Grays Harbor County, in the State of Washington, to-wit:

Lizzie Rolfson—The North half of the Southeast quarter of Section Thirty-six (36), Township Twenty-three (23) North, Range Thirteen (13) West, Willamette Meridian.

Alvin Smith—The Southwest quarter of the Northwest quarter of the Northwest quarter of the Southwest quarter of Section Eight (8), Township Twenty-one (21) North, Range Eleven (11) West, Willamette Meridian.

Eugene Smith—The Southeast quarter of the Northwest quarter and the Northeast quarter of the Southwest quarter of Section Eight (8), Township Twenty-one (21) North, Range Eleven (11) West, Willamette Meridian.

as allotments to be held and owned by said plaintiffs, in all respects as provided by law.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents, be and they are hereby ordered and directed to issue to said plaintiffs Lizzie Rolfson, Alvin Smith and Eugene Smith, certificates of allotment of said lands heretofore described, said certificates of allotment to be in effect and to award to said plaintiffs all

of the rights to which said plaintiffs are entitled under and by virtue of the laws of the United States.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents and all persons claiming by, through or under them, be and they are hereby forever barred and estopped from ever claiming or asserting that said plaintiffs Lizzie Rolfson, Alvin Smith and Eugene Smith, their heirs, executors, administrators and assigns, are not entitled to said land as and for their allotment, with full right to use, build upon, clear, improve, and occupy the same in all respects as provided by law. [159]

It is FURTHER ORDERED, ADJUDGED AND DECREED; that the plaintiffs Juanita Christoffson, Robert Rolfson, Donald Smith and Vivian Forden are not entitled to allotments of land upon the Quinaielt Indian Reservation sued for by them, and that their application on and petition for such allotments set forth in their complaint be and the same are hereby denied; that plaintiff excepts to so much of said order as denies said allotment to Juanita Christoffson, Robert Rolfson, Donald Smith and Vivian Forden, and said exception is allowed; defendant excepts to so much of said order as allots any land to any of said plaintiffs and its exception is allowed.

Done in open court this 24th day of December A. D. 1928.

EDWARD E. CUSHMAN,
Judge.

O. K. as to form.

D. SPAULDING,
(Asst. U. S. Attorney.)

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 24, 1928.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [160]

United States District Court, Western District of Washington, Southern Division.

No. 314-E

LIZZIE ROLFSON, et al,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

ASSIGNMENTS OF ERROR.

Comes now the above named defendant, the United States of America, by and through its attorneys, Anthony Savage, United States Attorney for the Western District of Washington, and John T. McCutcheon and Tom DeWolfe, Assistant United States Attorneys for said District, and James T. Rahily, Associte Counsel, and respectfully submits the following Assignments of Error upon which it relies in support

of its appeal from the judgment and decree entered on the 24th day of December, 1928, in said cause, in the District Court of the United States for the Southern Division of the Western District of Washington, and under which Assignments of Error said appellant seeks reversal of the decision, judgment and decree of said Court:

I.

That the District Court erred in holding and finding that the lands selected for allotment by the plaintiffs were subject to selection and allotment under the laws of the United States, and that the plaintiffs are lawfully entitled to have such lands allotted to them.

II.

That the District Court erred in holding and finding that the officers and agents of the United States of America have wrongfully failed, neglected and refused to allot the said lands to the said plaintiffs, or to issue to [163] the plaintiffs any trust or fee patent therefor.

III.

That the District Court erred in adjudging that the plaintiffs were entitled to a decree adjudging and decreeing that the said plaintiffs are entitled to the lands selected for their allotments, and that the plaintiffs are entitled to have said lands allotted to them by the defendant, its officers and agents.

IV.

That the District Court erred in concluding, holding, and finding that the plaintiffs are entitled to a

decree estopping the defendant, its officers and agents, from hereafter interfering with the plaintiffs in their rights to possession of said lands and their rights to improve the same, and estopping the defendant from hereafter claiming or asserting that said plaintiffs are not entitled to go upon, clear, improve, and build upon said lands.

V.

That the District Court erred in holding and finding that the general allotment statutes and acts do not apply and that the Act of March 4, 1911, is a special allotment act, when said Act of March 4, 1911, expressly provides that allotments are made under the provisions of the allotment laws of the United States.

VI.

That the District Court erred in holding and finding that the Indian tribes who refused to become parties to the Treaty of July 1, 1855, and January 23, 1856, were affiliated therein with the Indian tribes that did participate in said Treaty and actually agreed to the same and signed the same. [164]

VII.

That the District Court erred in holding and finding that the decision and action of the Indian Council of 1922 as to recognition and adoption of members was in itself authoritative, notwithstanding the fact that said proceedings of said Council were in no part approved by the Secretary of the Interior of the United States of America.

VIII.

That the District Court erred in holding and finding that under the Act of June 7, 1897, where an Indian woman who was recognized tribally at that time and married to a white husband has children, that the offspring of said children are entitled to receive allotments under the law.

IX.

That the District Court erred in holding and finding that the rights of children of a white man and an Indian woman in tribal property embraces the children of the mother who was living at the time of the passage of the Act of June 7, 1897, and was not then recognized by the tribe as one of its members.

X.

That the District Court erred in holding and finding that the plaintiffs and their parents had been properly adopted into the Quinaielt tribe by the adoption action of the Indian Council of said tribe of 1912 when said action was void for not having been approved by the Secretary of the Interior of the United States.

XI.

That the District Court erred in holding and finding that the plaintiffs who were born of a marriage prior to 1897 between a white man and a woman of Indian blood who was living on June 7, 1897, and not then recognized as a [165] member of the tribal Indians of the Quinaielt Reservation, were entitled to allotments thereon.

XII.

That the District Court erred in entering decree herein on December 24, 1928, awarding allotments to the plaintiffs herein when the evidence adduced at the time of the trial herein was insufficient to sustain said decree and exceptions to said decree having been timely noted.

XIII.

That the District Court erred in holding and decreeing that the defendant, its officers and agents, are directed to issue to the plaintiffs, certificates of allotment of the lands claimed to be selected by said plaintiffs.

ANTHONY SAVAGE,
United States Attorney.
JOHN T. McCUTCHEON,
Assistant United States Attorney.
TOM DeWOLFE,
Assistant United States Attorney.

[Endorsed]: Received a copy of the within assignments this 19th day of March 1929.

STUART H. ELLIOTT &
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar 20 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [166]

United States District Court, Western District of Washington, Southern Division.

No. 314-E

LIZZIE ROLFSON, et al,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendants.

ORDER ALLOWING APPEAL.

On the application of the defendant herein it is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and decree heretofore entered and filed herein on the 24th day of December, 1928, be and the same is hereby allowed.

It is further ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

DONE IN OPEN COURT this 20th day of March, 1929.

J. STANLEY WEBSTER,
Judge.

[Endorsed]: Received a copy of the within Order this 20th day of March 1929.

STUART H. ELLIOTT &
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar 20, 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [167]

United States District Court, Western District of Washington, Southern Division.

No. 315 E

VIRGINIA WALKOWSKY, ALVIN WALKOWSKY, CATHERINE WALKOWSKY, and EDNA WEISS, Minors, by KATE WALKOWSKY WEISS, guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

BILL OF COMPLAINT.

To the Honorable Judges of the Above Entitled Court, Sitting in Equity—

The plaintiffs complain of the defendant, and for cause of action allege and say:—

I.

That the plaintiffs are and at all times since their birth have been persons of part Indian blood, and members of the Quinaielt Tribe of Indians of Grays

Harbor County, Washington, within this District, and that the said Kate Walkowsky Weiss was duly and in accordance with law appointed guardian ad litem of the said plaintiffs by the above entitled court upon the 11th day of April 1927, and she duly qualified as guardian ad litem, and is now acting as such upon the behalf of the plaintiffs herein.

II.

That the father of the plaintiffs, Virginia, Alvin, and Catherine Walkowsky was a white man named John Walkowsky, and that he is now deceased, that the father of Edna Weiss is a white man named Robert Weiss and that he is still living. That the mother of the all of the above named plaintiffs is Kate Walkowsky Weiss, and she is a duly enrolled and allotted Indian of the Quinaielt [168] tribe of Indians. That all of the above named minor children plaintiffs herein, were born and reared, and now live in Pacific County, Washington, within this District. That the mother of said plaintiffs has been but recently allotted land upon the Quinaielt Indian Reservation, and expects to make her home upon said Reservation when the land is cleared and a home established thereon.

III.

That the defendant has recognized many members of the plaintiffs family, and have enrolled and allotted many members of said family, among whom are the mother of the plaintiffs, Kate Walkowsky Weiss, who is Quinaielt allottee No. 868, the brother of the plaintiffs, Albert Walkowsky who is Quinaielt allottee No. 869, a sister, Louise Walkowsky Quinaielt

allottee No. 870, a brother, Frank Walkowsky, Quinaielt allottee No. 871, a sister, Ida Walkowsky, Quinaielt allottee No. 872, a brother, Leonard Walkowsky, Quinaielt allottee No. 873, a sister Rose Walkowsky, Quinaielt-allottee No. 874, and a sister Grace Walkowsky Griggs, Quinaielt allottee No. 758. That defendant has recognized and allotted upon the said Quinaielt Indian Reservation many other members of the plaintiffs family more distantly related than those above set forth.

IV.

That the plaintiffs are as above set forth brother and sisters, and by reason of this fact, and the facts hereinafter set forth relative to the selection and denial of certain allotments of land upon the Quinaielt Indian Reservation, under respectively the same conditions and like circumstances, these plaintiffs have a common [169] interest in the subject matter of this action, and are affected in a similar manner.

V.

That the ground upon which the Court's jurisdiction rests are as follows: That the plaintiffs are Indians and members of the Quinaielt Tribe of *Indian*, and are entitled under the treaty made and entered into between the United States and the Quinaielt Indians, and other bands of Indians, and under the allotment acts of the United States, to an allotment of at least 80 acres, each, of land upon the said Quinaielt Indian Reservation in the State of Washington within this Dstrict. The jurisdiction further depends upon the Acts of August 15, 1894 (28 Stat. L., 305), as amended by the Act of February 6, 1901

(31 Stat. L., 760) giving the rights to Indians to bring suits against the United States to establish their rights to an allotment of land.

VI.

That about two years ago a Special Alloting Agent was sent by the defendant, more particularly the Secretary of the Interior *ro* said Quinaielt Indian Reservation for the purpose of alloting lands upon said reservation to Indians entitled thereto, and said plaintiffs in due course, and in accordance with law, regularly proceeded to make selections for allotments of land upon said Quinaielt Reservation, which said selections for allotments are described in words and figures as follows; to-wit:

Virginia Walkowsky—N/2 of NW/4 Sec 31 T 21 N R 11 W W M in Washington

Alvin Walkowsky—W/2 of SW/4 Sec 29 T 21 N R 11 W W M in Washington [170]

Catherine Walkowsky—N/2 of SE/4 Sec 29 T 21 N R 11 W W M in Washington

Edna Weiss—S/2 of SW/4 Sec 30 T 21 N R 11 W W M in Washington

VII.

That thereafter, plaintiffs are informed and believe, said selections were regularly forwarded to the Secretary of the Interior at Washington D. C. in accordance with law, and each and every step was regularly completed for the actual approval and granting said allotments and the issuance of the necessary patents therefor except only the approval of the Secre-

tary of the Interior. That recently the defendant, more particularly the Secretary of the Interior and the Commissioner of Indian Affairs, neglected, refused and declined to allot said plaintiffs the identical allotments herein described or any allotment of land upon the Quinaielt Reservation whatsoever. That said denial and refusal of the plaintiffs rights to an allotment was for no reason known to plaintiffs, but that such refusal and denial is arbitrary and without reason and in no manner justified, and is a denial of a right of said plaintiffs as set forth by the acts of Congress of the United States, its laws and treaties, and a refusal to perform a duty of said defendant as set forth in said laws and treaties.

VIII.

That said allotments selected by the plaintiffs herein are unallotted, unimproved, vacant Indian lands capable of being cleared and cultivated, duly surveyed by the United States Government and subject to selection and allotment under the laws of the United States. [171]

IX.

That notwithstanding all of the facts hereinbefore alleged, defendant, its officers and agents, have wrongfully failed, neglected and refused to allot the said lands to the plaintiffs herein, or to issue to said plaintiffs any trust or fee patent therefor, and have denied and excluded, and still deny and exclude plaintiffs herein from said lands and have refused and still refuse to let said plaintiffs go upon or reside upon said lands or any portion thereof.

X.

That said plaintiffs are entitled to have said lands so selected by them allotted to them, and desire that the same be allotted to them and that their rights be recognized, and that they be permitted to go upon, live upon, cultivate and improve said lands as their homes.

XI.

That plaintiffs waive answer under oath.

WHEREFORE plaintiffs pray judgment as follows:

I.

That a judgment and decree be entered herein as provided by law in favor of these claimants to said 80 acre tracts of land hereinbefore described, and that said decree be properly certified to the Secretary of the Interior, and that plaintiffs be awarded said lands as their allotments and that they be adjudged and decreed to have full right, power and authority to go upon, live upon, cultivate and improve said lands as their homes, in all respects as provided by law.

II.

That the plaintiffs have all other and further relief as is equitable and just. [172]

STUART H. ELLIOTT,

H. G. & DIX H. ROWLAND,

Solicitors for Plaintiffs.

State of Washington,
County of Pacific,—ss.

KATE WALKOWSKY WEISS, being first duly sworn deposes and says; That she is the duly appointed and qualified guardian ad litem of the plaintiffs above named; that she makes this verification for and upon behalf of said minors as such guardian ad litem; that she has read and knows the contents of the foregoing Bill of Complaint, and that the statements therein are true as she verily believes.

KATE WALKOWSKY WEISS.

Subscribed and sworn before me this 8th day of February 1927.

[Notary Seal] GEO. J. DEVER,

Notary Public in and for the State of Washington residing at So. Bend, Wn.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Feb 24, 1927.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [173]

United States District Court, Western District of Washington, Southern Division.

No. 315-E

VIRGINIA WALKOWSKY, ALVIN WALKOWSKY, CATHERINE WALKOWSKY, and EDNA WEISS, Minors, by KATE WALKOWSKY WEISS, guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

SECOND AMENDED ANSWER.

Comes now the above named defendant by its attorney, and by way of Second Amended Answer to plaintiffs' bill of complaint, admits, denies and alleges as follows:

I.

Referring to paragraph I of plaintiffs' bill of complaint, defendant denies that plaintiffs are members of the Quinaielt Tribe of Indians and admits every other allegation therein contained.

II.

Referring to paragraph II of plaintiffs' bill of complaint, defendant denies that KATE WALKOWSKY WEISS, Guardian ad litem, is a duly enrolled and allotted Indian of the Quinaielt Tribe of Indians, and admits each and every other material allegation therein contained.

III.

Referring to paragraph III, defendant admits the same.

IV.

Referring to paragraph IV, defendant denies each and every material allegation therein contained.

V.

Referring to paragraph V, defendant admits the jurisdiction of the above entitled court, and denies each and every other material allegation therein contained. [174]

VI.

Referring to paragraph VI defendant admits that a Special allotting agent was sent to said Quinaielt Reservation for the purpose of allotting lands to Indians entitled thereto and defendant denies each and every other material allegation therein contained.

VII.

Referring to paragraph VII, defendant denies each and every material allegation contained therein.

VIII.

Referring to paragraph VIII defendant admits that the lands referred to in paragraph VI of plaintiffs' bill of complaint are surveyed and unallotted, unimproved, vacant Indian lands, and subject to selection and allotment under the laws of the United States.

IX.

Referring to paragraph IX defendant admits that it has refused to allot lands to plaintiffs herein, but denies that said refusal was wrongful.

X.

Referring to paragraph X defendant denies each and every material allegation therein contained.

WHEREFORE, having answered plaintiffs' bill of complaint, defendant prays that said action be dismissed, and that it have and recover its costs herein.

THOS. P. REVELLE,
United States Attorney.

DAVID SPAULDING,
Assistant United States Attorney. [175]

United States of America,
Western District of Washington,
Southern Division,—ss.

DAVID L. SPAULDING, being first duly sworn, on oath deposes and says: That he is an Assistant United States Attorney for the Western District of Washington, and makes this verification for and on behalf of the United States of America, defendant herein; that he has read the foregoing Second Amended Answer; knows the contents thereof, and believes the same to be true.

DAVID L. SPAULDING.

[Seal] Subscribed and sworn to before me this 10th day of January, 1928.

ED. M. LAKIN,
Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District

Court, Western District of Washington, Southern Division, Jan 11, *1920.*

ED. M. LAKIN,
Clerk.
By Lakin
[176]

In the United States District Court for the Western District of Washington, Southern Division.

No. 315--E

VIRGINIA WALKOWSKY, ALVIN WALKOWSKY, CATHERINE WALKOWSKY, and EDNA WEISS, Minors, by KATE WALKOWSKY WEISS, guardian ad litem,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

DECREE.

This cause came on to be heard at this term, the plaintiffs Virginia Walkowsky, Alvin Walkowsky, Catherine Walkowsky, and Edna Weiss, Minors, by Kate Walkowsky Weiss, guardian ad litem, appearing by their counsel Stuart H. Elliott and H. G. and Dix H. Rowland, and the defendant appearing by its counsel Anthony Savage, U. S. District Attorney, Seattle, Wash., David Spaulding, Asst. U. S. District Attorney, Seattle, Wash., John T. McCutcheon, Asst. U. S. District Attorney, Tacoma, James T. Rahily, Associate Counsel, Washington, D. C.; and the Court having taken the matter under advisement and ren-

dered his memorandum decision herein after said cause had been submitted to the court upon written briefs, and thereupon upon consideration thereof it is

ORDERED, ADJUDGED AND DECREED:

That plaintiffs Virginia Walkowsky, Alvin Walkowsky and Catherine Walkowsky be and they are hereby entitled to the lands heretofore selected by them, situate upon the Quinaielt Indian Reservation, within this District, in Grays Harbor County, in the State of Washington, to-wit: [177]

Virginia Walkowsky—The North half of the Northwest quarter of Section Thirty-one (31) in Township Twenty-one (21) North, Range Eleven (11) West of the Willamette Meridian.

Alvin Walkowsky—The West half of the Southwest quarter of Section Twenty-nine (29), in Township Twenty-one (21) North, Range Eleven (11) West, of the Willamette Meridian.

Catherine Walkowsky—The North Half of the Southeast quarter of Section Twenty-nine (29), in Township Twenty-one (21) North, Range Eleven (11) West, of the Willamette Meridian.

as allotments to be held and owned by said plaintiffs, in all respects as provided by law.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff Edna Weiss, is not entitled to an allotment, and that her petition to be allotted upon the Quinaielt Indian Reservation be and the same is hereby denied.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and

agents, be and they are hereby ordered and directed to issue to said plaintiffs, certificates of allotment of said lands heretofore described, said certificates of allotment to be in effect and to award to said plaintiffs all of the rights to which said plaintiffs are entitled under and by virtue of the laws of the United States.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents and all persons claiming by, through or under them, be and they are hereby forever barred and estopped from ever claiming or asserting that said plaintiffs, their heirs, executors, administrators and assigns, are not entitled to said land as and for their allotment, with full right to use, build upon, clear, improve, and occupy the same in all respects as provided by law. [178]

The plaintiff, as guardian ad litem, excepts to so much of said order as denies an allotment to Edna Weiss, and the exception is allowed; the defendant excepts to so much of said decree as makes any allotment to plaintiffs and the exception is allowed.

Done in open court this 24th day of December A. D. 1928.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: O. K. as to form.

D. SPAULDING,
(Asst. U. S Attorney)

[Endorsed]: Filed in the United States District

Court, Western District of Washington, Southern Division, Dec 24 1928.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [179]

United States District Court, Western District of Washington, Southern Division.

No. 315-E

VIRGINIA WALKOWSKY, et al,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

STATEMENT OF ADMITTED FACTS.

IT IS HEREBY STIPULATED by and between the plaintiffs and the defendant in the above entitled action that the following facts are admitted by the plaintiffs and defendant as evidence in said case and may be received as such without the necessity of proving them *thru* the medium of witnesses:—

1. That *Kat* Walkowsky, the mother of Virginia Walkowsky, Alvin Walkowsky, Catherine Walkowsky and Edna Weiss, minors, was born September 1, 1874. That her Indian name was Toh-toh-atl, and that she is a full blooded Indian.

2. That Kate Walkowsky was born at Oysterville, Washington, on Shoalwater Bay.

3. That said Kate Walkowsky on January 9, 1893, married John Walkowsky, a white man,

4. That the following are the names of the children and the dates of their birth, which were born to said Kate Walkowsky and John Walkowsky:—

a. Albert Walkowsky, born March 31, 1894.
b. Louise Walkowsky, born August 1, 1895.
c. Frank Walkowsky, born April 9, 1897.
d. Ida Walkowsky, born March 3, 1899.
e. Grace Walkowsky Griggs, born June 28, 1900.
f. Leonard Walkowsky, born October 26, 1904.
g. Rose Walkowsky, born June 16, 1906.
h. Kenneth Walkowsky, born January 19, 1909.
i. Virginia Walkowsky, born August 4, 1912.
j. Alvin Walkowsky, born August 26, 1916.
k. Catherine Walkowsky, born August 26, 1916.

[180]

5. That all of the above named children with the exception of Virginia, Alvin and Catherine Walkowsky, have received allotments upon the Quinaielt Reservation.

7. That the plaintiffs above named, Virginia Walkowsky, Alvin Walkowsky and Catherine Walkowsky, were born to the said Kate Walkowsky and John Walkowsky after the adoption of Kate Walkowsky and her eight children by the Quinaielt tribe of Indians. That the said Kate Walkowsky after the birth of the above-named Catherine Walkowsky separated from the said John Walkowsky and divorced him and married one Robert Weiss, a white man, by whom she had one child, Edna Weiss, one of the plaintiffs above named, born on the 18th day of February 1919.

8. That the mother of Kate Walkowsky was an Indian named Spieten who was a member of the Wy-

nooche band of Indians in the State of Washington. That her father was an Indian named Tath Tohe, and he was a full blooded Chinook Indian.

Dated this 10th day of January, 1928.

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Attorneys for Plaintiffs.

DAVID SPAULDING,
Attorneys for defendant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, *Northern* Division, Jan 10 1928

ED. M. LAKIN,
Clerk.
By Lakin. [181]

United States District Court, Western District of Washington, Southern Division.

No. 315-E

VIRGINIA WALKOWSKY, et al,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

ASSIGNMENTS OF ERROR.

Comes now the above named defendant, the United States of America, by and through its attorneys, Anthony Savage, United States Attorney for the Western District of Washington, and John T. McCutcheon and Tom DeWolfe, Assistant United States Attorneys

for said District, and James T. Rahily, Associate Counsel, and respectfully submits the following assignments of Error upon which it relies in support of its appeal from the judgment and decree entered on the 24th day of December, 1928, in said cause, in the District Court of the United States for the Southern Division of the Western District of Washington, and under which Assignments of Error said appellant seeks reversal of the decision, judgment and decree of said Court:

I.

That the District Court erred in holding and finding that the lands selected for allotment by the plaintiffs were subject to selection and allotment under the laws of the United States, and that the plaintiffs are lawfully entitled to have such lands allotted to them.

II.

That the District Court erred in holding and [184] finding that the officers and agents of the United States of America have wrongfully failed, neglected and refused to allot the said lands to the said plaintiffs, or to issue to the plaintiffs any trust or fee patent therefor.

III.

That the District Court erred in adjudging that the plaintiffs were entitled to a decree adjudging and decreeing that the said plaintiffs are entitled to the lands selected for their allotments, and that the plaintiffs are entitled to have said lands allotted to them by the defendant, its officers and agents.

IV.

That the District Court erred in concluding, holding, and finding that the plaintiffs are entitled to a decree estopping the defendant, its officers and agents, from hereafter interfering with the plaintiffs in their rights to possession of said lands and their rights to improve the same, and estopping the defendant from hereafter claiming or asserting that said plaintiffs are not entitled to go upon, clear, improve, and build upon said lands.

V.

That the District Court erred in holding and finding that the general allotment statutes and acts do not apply and that the Act of March 4, 1911, is a special allotment act, when said Act of March 4, 1911, expressly provides that allotments are made under the provisions of the allotment laws of the United States.

VI.

That the District Court erred in holding and finding that the Indian tribes who refused to become parties [185] to the Treaty of July 1, 1855, and January 23, 1856, were affiliated therein with the Indian tribes that did participate in said Treaty and actually agreed to the same and signed the same.

VII.

That the District Court erred in holding and finding that the decision and action of the Indian Council of 1922 as to recognition and adoption of members was in itself authoritative, notwithstanding the fact that said proceedings of said Council were in no part

approved by the Secretary of the Interior of the United States of America.

VIII.

That the District Court erred in holding and finding that under the Act of June 7, 1897, where an Indian woman who was recognized tribally at that time and married to a white husband has children, that the offspring of said children are entitled to receive allotments under the law.

IX.

That the District Court erred in holding and finding that the rights of children of a white man and an Indian woman in tribal property embraces the children of the mother who was living at the time of the passage of the Act of June 7, 1897, and was not then recognized by the tribe as one of its members.

X.

That the District Court erred in holding and finding that the plaintiffs and their parents had been properly adopted into the Quinaielt tribe by the adoption action of the Indian Council of said tribe of 1912 when said action was void for not having been approved by the Secretary of the Interior of the United States. [186]

XI.

That the District Court erred in holding and finding that the plaintiffs who were born of a marriage prior to 1897 between a white man and a woman of Indian blood who was living on June 7, 1897, and not then recognized as a member of the tribal In-

dians of the Quinaielt Reservation, were entitled to allotments thereon.

XII.

That the District Court erred in entering decree herein on February 5, 1929, awarding allotments to the plaintiffs herein when the evidence adduced at the time of the trial was insufficient to sustain said decree and exceptions to said decree having been timely noted.

XIII.

That the District Court erred in holding and decreeing that the defendant, its officers and agents, are directed to issue to the plaintiffs, certificates of allotment of the lands claimed to be selected by said plaintiffs.

ANTHONY SAVAGE,
United States Attorney.

JOHN T. McCUTCHEON,
Assistant United States Attorney.

TOM DeWOLFE,
Assistant United States Attorney.

[Endorsed]: Received a copy of the within assignments this 19th day of March 1929.

STUART H. ELLIOTT &
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District

Court, Western District of Washington, Southern Division, Mar 20 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [187]

United States District Court, Western District of Washington, Southern Division.

No. 315-E

VIRGINIA WALKOWSKY, et al,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

ORDER ALLOWING APPEAL.

On the application of the defendant herein it is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and decree heretofore entered and filed herein on the 24th day of December, 1928, be and the same is hereby allowed.

It is further Ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 20th day of March, 1929.

J. STANLEY WEBSTER,
Judge.

[Endorsed]: Received a copy of the within Order this 20th day of March 1929.

STUART H. ELLIOTT &
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar 20 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [188]

United States District Court, Western District of Washington, Southern Division.

No. 320-E.

MARY BARICHIO PETIT, and NORRIS PETIT, ELLIS A. PETIT, OSCAR BRIGNONE, minors, by PAUL PETIT, Guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

BILL OF COMPLAINT.

To the Honorable Judges of the Above Entitled Court, Sitting in Equity:

The plaintiffs complain of the defendant, and for cause of action, allege and say:

I.

That the plaintiffs are, and at all times since their birth have been persons of part Indian blood, and members of the Quinaielt tribe of Indians of Grays Harbor County, Washington, within this District, and that the said Paul Petit was duly and in accordance with law appointed guardian ad litem of the plaintiffs, Norris Petit, Ellis A. Petit, and Oscar Brignone, minors, by the above entitled Court upon the 11th day of April 1927, and he duly qualified as such guardian ad litem, and is now acting as such upon the behalf of the minor plaintiffs herein.

II.

That the plaintiff, Mary Barichio Petit is the mother of the said minor children, Norris Petit, and Ellis A. Petit, and is the aunt of the plaintiff Oscar Brignone, that the said Mary Barichio Petit is a Quinaielt Indian by blood, and the wife of said Paul Petit, guardian ad litem named herein, who is a duly enrolled and allotted Indian of the Quinaielt Indian Reservation. [189]. That all of the plaintiffs named herein, were born and reared, and now live in Pacific County, near Bay Center, Washington, within this District, and have always lived associated, and affiliated with the Indians of this locality, and other Quinaielt Indians, and have always been considered as Indians in this locality. That Paul Petit as before stated has recently been allotted upon the said Quinaielt Indian Reservation, and expects to make his home thereon with his family when the land has been cleared and a home established thereon.

III.

That the plaintiffs have many members of their family recognized and allotted upon the said Quinaielt Indian Reservation, among whom as before stated is Paul Petit, the husband of the plaintiff, Mary Barichio Petit, and the father of the plaintiffs, Norris Petit, and Ellis A. Petit. Frank G. Barichio, Quinaielt allottee No. 593 who is the father of the plaintiff, Mary Barichio Petit, and the grandfather of the plaintiffs, Norris Petit, and Ellis A. Petit. Elizabeth Springer, Quinaielt allottee No. 592 who is the grandmother of the plaintiff, Mary Barichio Petit, and the great grandmother of the plaintiff, Norris Petit, and Ellis A. Petit. The plaintiff Mary Barichio Petit has the following named uncle and aunt allotted upon the said Quinaielt Indian Reservation, John Barichio, Quinaielt allottee No. 594, Ellen Springer, Quinaielt allottee No. 595, also a cousin, Henry Franklin, Quinaielt allottee No. 596. That plaintiffs have many other relatives allotted upon the said Quinaielt Indian Reservation on their father's side. [189A]

IV.

That by reason of the relationship of the plaintiffs as herein described, and by reason of the facts hereinafter set forth relative to the selection and denial of certain allotments of land upon the said Quinaielt Indian Reservation, these plaintiffs have a common interest in the subject matter of this action, and are affected in a similar manner.

V.

That the ground upon which the Court's jurisdiction rests are as follows: That the plaintiffs are Indi-

ans and members of the Quinaielt tribe of Indians, and are entitled under the treaty made and entered into between the United States and the Quinaielt Indians, and other bands of Indians, and under the allotment acts of the United States, to an allotment of at least 80 acres, each, of land upon the said Quinaielt Indian Reservation in the State of Washington within this District. The jurisdiction of the court further depends upon the Acts of August 15, 1894 (28 Stat. L., 305) as amended by the Act of February 6, 1901 (31 Stat. L., 760) giving the rights to Indians to bring suits against the United States to establish their rights to an allotment of land.

VI.

That about two years ago, a Special Alloting Agent was sent by the defendant, more particularly the Secretary of the Interior to the said Quinaielt Indian Reservation for the purpose of alloting lands upon the said Reservation to Indians entitled thereto, and said plaintiffs in due course and in accordance with law, regularly proceeded to make selections for allotments of land upon said Quinaielt Reservation, which said selections for allotment are [190] described in words and figures as follows to-wit:

Mary Barichio Petit—N/2 NE/4 Sec 8 T 22 N R 11 W W M in Washington.

Norris Petit—E/2 NW/4 Sec 16 T 22 N R 11 W W M in Washington

Ellis A. Petit—N/2 NW/4 Sec 8 T 22 N R 11 W W M in Washington

Oscar Brignone—E/2 NE/4 Sec 7 T 22 N R 11 W W M in Washington.

VII.

That thereafter, plaintiffs are informed and believe, said selections were regularly forwarded to the Secretary of the Interior at Washington D. C. in accordance with law, and each and every *dtep* was regularly completed for the actual approval and granting said allotments and the issuance of the necessary patents therefor, except only the approval of the Secretary of the Interior. That recently the defendant, more particularly the Secretary of the Interior, and the Commissioner of Indian Affairs, neglected refused, and declined to allot said plaintiffs the identical allotments herein described or any allotment of land upon the Quinaielt Reservation whatsoever. That said denial and refusal of the plaintiffs rights to an allotment was for no reason known to the plaintiffs and is an arbitrary action and in no manner justified, and is a denial of a right of said plaintiffs as set forth *ny* the acts of Congress of United States, its laws and treaties, and a refusal to perform a duty of said defendant as set forth in said laws and treaties.

VIII.

That said allotments selected by the plaintiffs herein are unallotted, unimproved, vacant Indian lands [191] capable of being cleared and cultivated, duly surveyed by the United States Government and subject to selection and allotment under the laws of the United States.

IX.

That notwithstanding all of the facts hereinbefore alleged, defendant, its officers and agents, have wrong-

fully failed, neglected and refused to allot the said lands to the plaintiffs herein, or to issue to said plaintiffs any trust or fee patent therefor, and have denied and excluded and still deny and exclude plaintiffs herein from said lands, and have refused and still refuse to allow said plaintiffs to go upon or reside upon said lands or any portion thereof.

X.

That plaintiffs are entitled to have said lands so selected by them allotted to them, and desire that the same be allotted to them, and that their rights be recognized, and that they be permitted to go upon, live upon, cultivate and improve said lands as their homes.

XI.

That plaintiffs waive answer under oath.

WHEREFORE plaintiffs pray judgment as follows:

L.

That a judgment and decree be entered herein as provided by law in favor of these claimants to said 80 acre tracts of land hereinbefore described, and that said decree be properly certified to the Secretary of the Interior, and that plaintiffs be awarded said lands as their allotments and that they be adjudged and decreed to have full right, power and authority to go upon, live upon, cultivate and [192] improve said lands as their homes; in all respects as provided by law.

II.

That the plaintiffs have all other and further relief as is equitable and just.

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Solicitors for Plaintiffs.

State of Washington,
County of Pacific,—ss.

MARY BARICHIO PETIT, being first duly sworn on oath deposes and says that she is one of the plaintiffs in the above entitled action, that she has read the foregoing bill of complaint, knows the contents thereof, and that the same is true as she verily believes.

MARY BARICHIO PETIT.

Subscribed and sworn before me this 7th day of March, 1927.

[Notary Seal] F. G. McINTOSH,

Notary Public in and for the State of Washington, residing at South Bend, Wash.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, April 11, 1927.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [193]

United States District Court, Western District of Washington, Southern Division.

No. 320-E.

MARY BARICHIO PETIT, and NORRIS PETIT, ELLIS A. PETIT, OSCAR BRIGNONE, minors, by PAUL PETIT, Guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

ANSWER.

Comes now the above named defendant by its attorney, and by way of answer to plaintiffs' bill of complaint, admits, denies and alleges as follows.

I.

Referring to Paragraph I of plaintiffs' bill of complaint, defendant denies that plaintiffs are members of the Quinaielt tribe of Indians, and admits each and every other material allegation therein contained.

II.

Referring to Paragraph II defendant denies each and every material allegation contained therein.

III.

Referring to paragraph III defendant denies each and every material allegation therein contained.

IV.

Referring to paragraph IV defendant denies the same.

V.

Referring to paragraph V defendant admits the jurisdiction of this Court and denies each and every other allegation therein contained. [194]

VI.

Referring to paragraph VI defendant admits that a Special Allotting Agent was sent to said Quinaielt Indian Reservation for the purpose of allotting lands to Indians entitled thereto, and denies each and every other material allegation therein contained.

VII.

Referring to paragraph VII of plaintiffs' bill of complaint defendant denies the same.

VIII.

Referring to paragraph VIII defendant admits that the lands described in paragraph VI of plaintiff's bill of complaint are surveyed, unallotted, unimproved, vacant Indian lands, and subject to selection and allotment under the laws of the United States.

IX.

Referring to paragraph IX defendant admits that it has refused to allot lands to the plaintiffs herein, but denies that said refusal is wrong.

X.

Referring to paragraph X defendant denies the same.

WHEREFORE, having answered plaintiffs' bill of

complaint, defendant prays that said action be dismissed, and that it have and recover its costs herein.

THOS. P. REVELLE,
United States Attorney.

DAVID L. SPAULDING,
Assistant United States Attorney.

United States of America,
Western District of Washington,
Southern Division,—ss.

DAVID L. SPAULDING, being first duly sworn, on oath deposes and *says*: That he is an Assistant United States Attorney for the Western District of Washington, and makes this verification for and [195] on behalf of the United States of America, defendant herein; that he has read the foregoing Answer; knows the contents thereof and believes the same to be true.

DAVID L. SPAULDING.

Subscribed and sworn to before me this 5th day of November, 1927.

[Seal] ALINE ESLER,
Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, *Northern* Division, Nov. 11, 1927.

ED. M. LAKIN,
Clerk.

By E. R.,
Deputy. [196]

In the United States District Court for the Western District of Washington, Southern Division.

No. 320-E.

MARY BARICHIO PETIT, and NORRIS PETIT, ELLIS A. PETIT, OSCAR BRIGNONE, minors, by PAUL PETIT, Guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

DECREE.

This cause came on to be heard at this term, the plaintiffs Mary Barichio Petit, and Norris Petit, Ellis A. Petit, Oscar Brignone, minors, by Paul Petit, Guardian ad litem, appearing by their counsel Stuart H. Elliott and H. G. & Dix H. Rowland, and the defendant appearing by its counsel Anthony Savage, U. S. District Attorney, Seattle, Wash., David Spaulding, Asst. U. S. District Attorney, Seattle, Wash., John T. McCutcheon, Asst. U. S. District Attorney, Tacoma, James T. Rahily, Associate Counsel, Washington, D. C.; and the Court having taken the matter under advisement and rendered his memorandum decision herein after said cause had been submitted to the Court upon written briefs, and thereupon upon consideration thereof it is

ORDERED, ADJUDGED AND DECREED: That plaintiffs Mary Barichio Petit, and Norris Petit, Ellis A. Petit, and Oscar Brignone, minors, be and they are hereby entitled to the lands heretofore

selected by them, situate upon the Quinaielt Indian Reservation, within [197] this District, in Grays Harbor County, in the State of Washington, to-wit:

Mary Bariehio Petit—The North half of the Northeast quarter of Section Eight (8), Township Twenty-two (22) North, Range Eleven (11) West, of the Willamette Meridian, in the State of Washington.

Norris Petit—The East half of the Northwest quarter of Section Sixteen (16), Township Twenty-two (22) North, Range Eleven (11) West, of the Willamette Meridian, in the State of Washington.

Ellis A. Petit—The North half of the Northwest quarter of Section Eight (8), Township Twenty-two (22) North, Range Eleven (11) West, of the Willamette Meridian, in the State of Washington.

Oscar Brignone—The East half of the Northeast quarter of Section Seven (7), Township Twenty-two (22) North, Range Eleven (11) West, of the Willamette Meridian, in the State of Washington.

as allotments to be held and owned by each of said plaintiffs respectively, in all respects as provided by law.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents be and they are hereby ordered and directed to issue to each of the said plaintiffs, certificates of al-

lotment of said land so allotted to them, said certificates of allotment to be in effect and to award to said plaintiffs all of the rights to which said plaintiffs are entitled under and by virtue of the laws of the United States.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents and all persons claiming by, through or under them, be, and they are hereby forever barred and estopped from ever claiming or asserting that said plaintiffs, their heirs, executors, administrators and assigns are not entitled to said lands as and for their allotments, with full right to use, build upon, clear, [198] improve, and occupy the same, in all respects as provided by law; to all of which defendants excepts and its exception is allowed.

Done in open court this 24th day of December A. D., 1928.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: O. K. as to form.

D. SPAULDING,
Asst. U. S. Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 24, 1928.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [199]

United States District Court, Western District of Washington, Southern Division.

No. 320-E.

MARY BARICHIO PETIT, et al.,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

ASSIGNMENTS OF ERROR.

Comes now the above named defendant, the United States of America, by and through its attorneys, Anthony Savage, United States Attorney for the Western District of Washington, and John T. McCutcheon and Tom DeWolfe, Assistant United States Attorneys for said District, and James T. Rahily, Associate Counsel, and respectfully submits the following Assignments of Error upon which it relies in support of its appeal from the judgment and decree entered on the 24th day of December, 1928, in said cause, in the District Court of the United States for the Southern Division of the Western District of Washington, and under which Assignments of Error said appellant seeks reversal of the decision, judgment and decree of said Court:

I.

That the District Court erred in holding and finding that the lands selected for allotment by the plaintiffs were subject to selection and allotment under the laws of the United States, and that the plaintiffs are lawfully entitled to have such lands allotted to them.

II.

That the District Court erred in holding and [202] finding that the officers and agents of the United States of America have wrongfully failed, neglected and refused to allot the said lands to the said plaintiffs, or to issue to the plaintiffs any trust or fee patent therefor.

III.

That the District Court erred in adjudging that the plaintiffs were entitled to a decree adjudging and decreeing that the said plaintiffs are entitled to the lands selected for their allotments, and that the plaintiffs are entitled to have said lands alloted to them by the defendant, its officers and agents.

IV.

That the District Court erred in concluding, holding, and finding that the plaintiffs are entitled to a decree estopping the defendant, its officers and agents, from hereafter interfering with the plaintiffs in their rights to possession of said lands and their rights to improve the same, and estopping the defendant from hereafter claiming or asserting that said plaintiffs are not entitled to go upon, clear, improve, and build upon said lands.

V.

That the District Court erred in holding and finding that the general allotment statutes and acts do not apply and that the Act of March 4, 1911, is a special allotment act, when said Act of March 4, 1911,

expressly provides that allotments are made under the provisions of the allotment laws of the United States.

VI.

That the District Court erred in holding and finding that the Indian tribes who refused to become parties [203] to the Treaty of July 1, 1855, and January 23, 1856, were affiliated therein with the Indian tribes that did participate in said Treaty and actually agreed to the same and signed the same.

VII.

That the District Court erred in holding and finding that the decision and action of the Indian Council of 1922 as to recognition and adoption of members was in itself authoritative, notwithstanding the fact that said proceedings of said Council were in no part approved by the Secretary of the Interior of the United States of America.

VIII.

That the District Court erred in holding and finding that under the Act of June 7, 1897, where an Indian woman who was recognized tribally at that time and married to a white husband has children, that the offspring of said children are entitled to receive allotments under the law.

IX.

That the District Court erred in holding and finding that the rights of children of a white man and an Indian woman in tribal property embraces the children

of the mother who was living at the time of the passage of the Act of June 7, 1897, and was not then recognized by the tribe as one of its members.

X.

That the District Court erred in holding and finding that the plaintiffs and their parents had been properly adopted into the Quinaielt tribe by the adoption action of the Indian Council of said tribe of 1912 when said action was void for not having been approved by the Secretary of the Interior of the United States. [204]

XI.

That the District Court erred in holding and finding that the plaintiffs who were born of a marriage prior to 1897 between a white man and a woman of Indian blood who was living on June 7, 1897, and not then recognized as a member of the tribal Indians of the Quinaielt Reservation, were entitled to allotments thereon.

XII.

That the District Court erred in entering decree herein on February 5, 1929, awarding allotments to the plaintiffs herein when the evidence adduced at the time of the trial was insufficient to sustain said decree and exceptions to said decree having been timely noted.

XIII.

That the District Court erred in holding and decreeing that the defendant, its officers and agents, are directed to issue to the plaintiffs, certificates of allot-

ment of the lands claimed to be selected by said plaintiffs.

ANTHONY SAVAGE,
United States Attorney.

JOHN T. McCUTCHEON,
Assistant United States Attorney.

TOM DeWOLFE,
Assistant United States Attorney.

[Endorsed]: Received a copy of the within Assignments this 19th day of March 1929.

STUART H. ELLIOTT &
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, *Northern* Division, March 20, 1929.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [205]

United States District Court, Western District of Washington, Southern Division.

No. 320-E

MARY BARICHIO PETIT, et al.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER ALLOWING APPEAL.

On application of the defendant herein it is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and decree heretofore entered and filed herein on the 24th day of December, 1928, be and the same is hereby allowed.

It is further ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 20th day of March, 1929.

J. STANLEY WEBSTER,
Judge.

[Endorsed]: Received a copy of the within Order this 20th day of March, 1929.

STUART H. ELLIOTT &
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, *Northern* Division, March 20, 1929.

ED. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [206]

United States District Court, Western District of Washington, Southern Division.

No. 321-E.

DEWEY BARICHIO, and LEDA E. BARICHIO, ROMIE D. BARICHIO, ANDREW B. BARICHIO, Minors, by VINIE WILSON BARICHIO, Guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

BILL OF COMPLAINT.

To the Honorable Judges of the Above Entitled Court, Sitting in Equity:

The plaintiffs complain of the defendant, and for cause of action allege and say:

I.

That the plaintiffs are and at all times since their birth have been persons of part Indian blood, and members of the Quinaielt tribe of Indians of Grays Harbor County, Washington, within this District, and that the said Vinie Wilson Barichio was duly and in

accordance with law appointed guardian ad litem of the plaintiffs, Leda E. Barichio, Romie D. Barichio, and Andrew B. Barichio, minors, by the above entitled Court upon the 11th day of April 1927, and she duly qualified as such guardian ad litem, and is now acting as such upon the *behelf* of the minor plaintiffs herein.

II.

That the plaintiff, Dewey Barichio above named is the father of the said minor plaintiffs, Leda E., Romie D. and Andrew B. Barichio, and that the said Dewey Barichio is a Quinaielt Indian by blood. That the mother of the said minor plaintiffs, and the wife of the said plaintiff, Dewey [207] Barichio, namely Vinie Wilson Barichio, the guardian ad litem herein is a duly enrolled and allotted Quinaielt Indian. That all of the plaintiffs named herein, were born and reared and now live in Pacific County near Bay Center Washington, within this District, and have always lived, associated, and affiliated with the Indians of this district, and other Quinaielt Indians and have never been considered except as Indians in this locality. That Vinie Wilson Barichio as before stated has been recently allotted upon the said Quinaielt Indian Reservation, and expects to make her home thereon with her family when the land has been cleared and a home established thereon.

III.

That the plaintiffs have many members of their family allotted upon the said Quinaielt Indian Reservation, among whom is as before stated, Vinie Wilson Barichio who is the wife of the plaintiff, Dewey Barichio, and the mother of the plaintiffs,

Leda E. Romie D. and Andrew B. Barichio. Frank G. Barichio Quinaielt allottee No. 593 who is the father of the said Dewey Barichio and the grandfather of the said Leda E. Barichio, Romie D. Barichio, and Andrew B. Barichio. That defendant has recognized and allotted many other members of the plaintiffs family upon the said Quinaielt Indian Reservation.

IV.

That by reason of the relationship of the plaintiffs as above described, and by reason of the facts hereinafter set forth relative to the selection and denial of certain allotments of land upon the said Quinaielt Indian Reservation, these plaintiffs have a common interest [208] in the subject matter of this action and are affected in a similar manner.

V.

That the ground upon which the Court's jurisdiction rests are as follows: That the plaintiffs are Indians and members of the Quinaielt tribe of Indians, and are entitled under the treaty made and entered into between the United States and the Quinaielt Indians, and other bands of Indians and under the allotment acts of the United States, to an allotment of at least 80 acres, each, of land upon the said Quinaielt Indian Reservation in the State of Washington within this District. The jurisdiction further depends upon the Acts of August 15, 1894 (28 Stat. L., 305), as amended by the Act of February 6, 1901 (31 Stat. L., 760), giving the right to Indians to bring suits against the United States to establish their rights to an allotment of land.

VI.

That about two years ago a Special Alloting Agent was sent by the defendant, more particularly the Secretary of the Interior to the said Quinaielt Indian Reservation for the purpose of alloting lands upon the said reservation to Indians entitled thereto, and said plaintiffs in due course, and in accordance with law, regularly proceeded to make selections for allotments of land upon said Quinaielt reservation, which said selections for allotments are described in words and figures as follows to-wit:

Dewey Barichio—W/2 NE/4 Sec 28 T 22 N R 12 W W M in Washington.

Leda E. Barichio—E/2 SW/4 Sec 14 T 23 N R 11 W W M in Washington

Romie D. Barichio—Lot 3, and NE/4 SW/4 Sec 7 T 22 N R 11 W W M in Washington

Andrew B. Barichio—Lot 1 and SE/4 NE/4 Sec 2 T 21 N R 11 W W M in Washington.

VII.

That thereafter, plaintiffs are informed and believe, said selections were regularly forwarded to the Secretary of the Interior at Washington D. C. in accordance with law, and each and every step was regularly completed for the actual approval and granting said allotments and the issuance of the necessary patents therefor, except only the approval of the Secretary of the Interior. That recently the defendant, more particularly the Secretary of the Interior and the Commissioner of Indian Affairs, neglected, refused and declined to allot said plaintiffs the identical allot-

ments herein described or any allotment of land upon the Quinaielt Reservation whatsoever. That said denial and refusal of the plaintiffs rights to an allotment was for no reason known to plaintiffs, but that such refusal and denial is arbitrary and without reason and in no manner justified, and is a denial of a right of said plaintiffs as set forth by the acts of Congress of the United States, its laws and treaties, and a refusal to perform a duty of said defendant as set forth in said laws and treaties.

VIII.

That said allotments selected by the plaintiffs herein are unallotted, unimproved, vacant Indian lands capable of being cleared and cultivated, duly surveyed by the United States Government and subject to selection and allotment under the laws of the United States. [210]

IX.

That notwithstanding all of the facts hereinbefore alleged, defendant, its officers and agents, have wrongfully failed, neglected and refused to allot the said lands to the plaintiffs herein, or to issue to said plaintiffs any trust or fee patent therefor, and have denied and excluded, and still deny and exclude plaintiffs herein from said lands and have refused and still refuse to allow said plaintiffs to go upon or reside upon said lands or any portion thereof.

X.

That said plaintiffs are entitled to have said lands so selected by them allotted to them, and desire that the same be allotted to them and that their rights be

recognized, and that they be permitted to go upon, live upon, cultivate and improve said lands as their homes.

XI.

That plaintiffs waive answer under oath.

Wherefore plaintiffs pray judgment as follows:

I.

That a judgment and decree be entered herein as provided by law in favor of these claimants to said 80 acre tracts of land hereinbefore described, and that said decree be properly certified to the Secretary of the Interior, and that plaintiffs be awarded said lands *ad* their allotments and that they be adjudged and decreed to have full right, power and authority to go upon, live upon, cultivate and improve said lands as their homes, in all respects as provided by law.

II.

That the plaintiffs have all other and further relief as is equitable and just. [211]

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Solicitors for Plaintiffs.

State of Washington,
County of Pacific,—ss.

DEWEY BARICHIO, being first duly sworn on oath deposes and says that he is one of the plaintiffs in the above entitled action, that he has read the fore-

going bill of complaint, knows the contents thereof, and that the same is true as he verily believes.

DEWEY BARICHIO.

Subscribed and sworn before me this *4* day of March 1927.

[Notary Seal] GEO. J. DEVER,

Notary Public in and for the State of Washington, residing at So. Bend, Wn.

Notary Public in and for the State of Washington, residing at South Bend.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, April 11, 1927.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [212]

United States District Court, Western District of Washington, Southern Division.

No. 321-E.

DEWEY BARICHIO, and LEDA E. BARICHIO, ROMIE D. BARICHIO, ANDREW B. BARICHIO, Minors, by VINIE WILSON BARICHIO, Guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

ANSWER.

Comes now the above named defendant by its attorney, and by way of answer to plaintiffs' bill of complaint, admits, denies and alleges as follows:

I.

Referring to paragraph I of plaintiffs' bill of complaint, defendant denies that plaintiffs are members of the Quinaielt tribe of Indians; defendant admits every other material allegation contained therein.

II.

Referring to paragraph II, defendant denies every material allegation contained therein.

III.

Referring to paragraph III, defendant admits every material allegation contained therein.

IV.

Referring to paragraph IV, defendant denies the same.

V.

Referring to paragraph V, defendant admits the jurisdiction of the above entitled Court, and denies each and every other material allegation contained therein. [213]

VI.

Referring to paragraph VI, defendant admits that a Special Allotting Agent was sent to the Quinaielt Indian Reservation for the purpose of allotting lands upon said Reservation to the Indians entitled thereto;

defendant denies every other material allegation contained therein.

VII.

Referring to paragraph VII, defendant denies each and every material allegation contained therein.

VIII.

Referring to paragraph VIII, defendant admits that the lands referred to in paragraph VI of plaintiff's bill of complaint are surveyed, unallotted, unimproved, vacant Indian lands, subject to selection and allotment under the laws of the United States.

IX.

Referring to paragraph IX, defendant admits that it has refused to allot the said lands to the plaintiff herein, but denies that said refusal is wrongful.

X.

Referring to paragraph X, defendant denies the same.

WHEREFORE, having answered plaintiff's bill of complaint, defendant prays that said action be dismissed, and that it have and recover its costs herein.

THOS. P. REVELLE,
United States Attorney.

DAVID L. SPAULDING,
Assistant United States Attorney. [214]

United States of America,
Western District of Washington,
Southern Division,—ss.

DAVID L. SPAULDING, being first duly sworn on oath, deposes and says: That he is an Assistant

United States Attorney for the Western District of Washington and makes this verification for and on behalf of the United States of America, defendant herein; that he has read the foregoing Answer; knows the contents thereof and believes the same to be true.

DAVID L. SPAULDING.

Subscribed and sworn to before me this 5th day of November, 1927.

[Seal] ALINE ESLER,
Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Nov. 9, 1927.

ED. M. LAKIN,
Clerk.

By E. R.,
Deputy. [215]

In the United States District Court for the Western District of Washington, Southern Division.

No. 321-E.

DEWEY BARICHIO, and LEDA E. BARICHIO, ROMIE D. BARICHIO, ANDREW B. BARICHIO, Minors, by VINIE WILSON BARICHIO, Guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

DECREE.

This cause came on to be heard at this term, the plaintiffs Dewey Barichio, and Leda E. Barichio,

Romie D. Barichio, Andrew B. Barichio, minors, by Vinie Wilson Barichio, Guardian ad litem, appearing by their counsel Stuart H. Elliott and H. G. & Dix H. Rowland, and the defendant appearing by its counsel Anthony Savage, U. S. District Attorney, Seattle, Wash., David Spaulding, Asst. U. S. District Attorney, Seattle, Wash., John T. McCutcheon, Asst. U. S. District Attorney, Tacoma, James T. Rahily, Associate Counsel, Washington, D. C.; and the Court having taken the matter under advisement and rendered his memorandum decision herein after said cause had been submitted to the Court upon written briefs, and thereupon upon consideration thereof it is

ORDERED, ADJUDGED AND DECREED:

That plaintiffs Dewey Barichio, and Leda E. Barichio Romie D. Barichio and Andrew B. Barichio, minors, be and they are hereby entitled to the lands heretofore selected by them, situate upon the Quinaielt Indian Reservation, within [216] this district, in Grays Harbor County, in the State of Washington, to-wit:

Dewey Barichio—The West half of the Northeast quarter of Section Twenty-eight (28), Township Twenty-two (22) North, Range Twelve (12) West of the Willamette Meridian, in the State of Washington.

Leda E. Barichio—The east half of the Southwest quarter of Section Fourteen (14), Township Twenty-three (23) North, Range Eleven (11), West, of the Willamette Meridian, in the State of Washington.

Romie D. Barichio—Lot Three (3), and the

Northeast quarter of the Southwest quarter of Section Seven (7), Township Twenty-two (22) North, Range Eleven (11) West, of the Willamette Meridian, in the State of Washington.

Andrew B. Barichio—Lot 1 and the *Woutheast* quarter of the Northeast quarter of Section Two (2) Township Twenty-one (21) North, Range Eleven (11) West, of the Willamette Meridian, in the State of Washington.

as allotments to be held and owned by each of said plaintiffs respectively, in all respects as provided by law.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents be and they are hereby ordered and directed to issue to each of the said plaintiffs, certificates of allotment of said land so allotted to them, said certificates of allotment to be in effect and to award to said plaintiffs all of the rights to which said plaintiffs are entitled under and by virtue of the laws of the United States.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents and all persons claiming by, through or under them, be and they are hereby forever barred and estopped from ever claiming or asserting that said plaintiffs, their heirs, executors, administrators and assigns, are not entitled to said lands as and for their [217] allotments, with full right to use, build upon, clear, improve, and occupy the same, in all respects as

provided by law; to all of which defendant excepts and its exception is allowed.

Done in open court this 24th day of December, A. D. 1928.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: O. K. as to form.

D. SPAULDING,
Asst. U. S. Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 24, 1928.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [218]

United States District Court, Western District of Washington, Southern Division.

No. 321-E

DEWEY BARICHIO, et al,
Plaintiffs,
vs.
THE UNITED STATES OF AMERICA,
Defendant.

ASSIGNMENTS OF ERROR.

Comes now the above named defendant, the United States of America, by and through its attorneys, Anthony Savage, United States Attorney for the Western District of Washington, and John T. Mc-

Cutcheon and Tom DeWolfe, Assistant United States Attorney for said District, and James T. Rahily, Associate Counsel, and respectfully submits the following Assignments of Error upon which it relies in support of its appeal from the judgment and decree entered on the 24th day of December, 1928, in said cause, in the District Court of the United States for the Southern Division of the Western District of Washington, and under which Assignments of Error said appellant seeks reversal of the decision, judgment and decree of said Court:

I.

That the District Court erred in holding and finding that the lands selected for allotment by the plaintiffs were subject to selection and allotment under the laws of the United States, and that the plaintiffs are lawfully entitled to have such lands allotted to them.

II.

That the District Court erred in holding and finding that the officers and agents of the United States of [221] America have wrongfully failed, neglected and refused to allot the said lands to the said plaintiffs, or to issue to the plaintiffs any trust or fee patent therefor.

III.

That the District Court erred in adjudging that the plaintiffs were entitled to a decree adjudging and decreeing that the said plaintiffs are entitled to the lands selected for their allotments, and that the plaintiffs are entitled to have said lands allotted to them by the defendant, its officers and agents.

IV.

That the District Court erred in concluding, holding, and finding that the plaintiffs are entitled to a decree estopping the defendant, its officers and agents, from hereafter interfering with the plaintiffs in their rights to possession of said lands and their rights to improve the same, and estopping the defendant from hereafter claiming or asserting that said plaintiffs are not entitled to go upon, clear, improve, and build upon said lands.

V.

That the District Court erred in holding and finding that the general allotment statutes and acts do not apply and that the Act of March 4, 1911, is a special allotment act, when said Act of March 4, 1911, expressly provides that allotments are made under the provisions of the allotment laws of the United States.

VI.

That the District Court erred in holding and finding that the Indian tribes who refused to become parties [222] to the Treaty of July 1, 1855, and January 23, 1856, were affiliated therein with the Indian tribes that did participate in said Treaty and actually agreed to the same and signed the same.

VII.

That the District Court erred in holding and findfinding that the decision and action of the Indian Council of 1922 as to recognition and adoption of members was in itself authoritative, notwithstanding the

fact that said proceedings of said council were in no part approved by the Secretary of the Interior of the United States of America.

VIII.

That the District Court erred in holding and finding that under the Act of June 7, 1897, where an Indian woman who was recognized tribally at that time and married to a white husband has children, that the offspring of said children are entitled to receive allotments under the law.

IX.

That the District Court erred in holding and finding that the rights of children of a white man and an Indian woman in tribal property embraces the children of the mother who was living at the time of the passage of the Act of June 7, 1897, and was not then recognized by the tribe as one of its members.

X.

That the District Court erred in holding and finding that the plaintiffs and their parents had been properly adopted into the Quinaielt tribe by the adoption action of the Indian Council of said tribe of 1912 when said action was void for not having been approved by the Secretary of the Interior of the United States. [223]

XI.

That the District Court erred in holding and finding that the plaintiffs who were born of a marriage prior to 1897 between a white man and a woman of Indian blood who was living on June 7, 1897,

and not then recognized as a member of the tribal Indians of the Quinaielt Reservation, were entitled to allotments thereon.

XII.

That the District Court erred in entering decree herein on February 5, 1929, awarding allotments to the plaintiffs herein when the evidence adduced at the time of the trial herein was insufficient to sustain said decree and exceptions to said decree having been timely noted.

XIII.

That the District Court erred in holding and decreeing that the defendant, its officers and agents, are directed to issue to the plaintiffs, certificates of allotment of the lands claimed to be selected by said plaintiffs.

ANTHONY SAVAGE,
United States Attorney.

JOHN T. McCUTCHEON,
Assistant United States Attorney.

TOM DeWOLFE,
Assistant United States Attorney.

[Endorsed]: Received a copy of the within Assignments this 19th day of March 1929.

STUART H. ELLIOTT &
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District

Court, Western District of Washington, *Northern* Division, Mar 20 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [224]

United States District Court, Western District of Washington, Southern Division.

No. 321-E

DEWEY BARICHIO, et al,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER ALLOWING APPEAL.

On the application of the defendant herein it is hereby ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and Decree heretofore entered and filed herein on the 24th day of December, 1928, be, and the same is hereby allowed.

It is further ORDERED that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

DONE in open court this 20th day of March, 1929.

J. STANLEY WEBSTER,
United States District Judge.

[Endorsed]: Received a copy of the within Order this 20th day of March 1929.

STUART H. ELLIOTT &
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar 20 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [225]

United States District Court, Western District of Washington, Southern Division.

No. 324-E

EDNA MAY ELLIOTT: RUTH G. ELLIOTT: WILLIAM H. ELLIOTT; JOHN G. ELLIOTT: and FRANK L. ELLIOTT and JEWELL M. ELLIOTT by WILLIAM A. ELLIOTT, guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

BILL OF COMPLAINT.

To the Honorable Judges of the Above Entitled Court, Sitting in Equity:—

The plaintiffs complain of the defendant, and for cause of action allege and say: —

I.

That the plaintiffs are and at all times since their birth have been persons of part Indian blood, and members of the Quinaielt Tribe of Indians of Grays Harbor County, Washington, within this District; that the above named Frank L. Elliott and Jewell M. Elliott are minors and that the said William A. Elliott was duly and in accordance with law appointed guardian ad litem of said plaintiffs by the above entitled court on the 14th day of June 1927, and he duly qualified as such and is now acting as such guardian ad litem upon behalf of said plaintiffs.

II.

That the father of said plaintiffs is named William A. Elliott and he is a duly enrolled and allotted Indian of the Quinaielt Indian Reservation in Washington, and all of the plaintiffs herein were born and reared in Wahkiakum County, [226] Washington, within this District at the Indian settlement Dahlia in said county. That the said William A. Elliott and all of the plaintiffs herein have at all times since their birth continuously lived as Indians and associated and affiliated with the Quinaielt Indians and associated and affiliated tribes and bands of Indians, and are fish eating Indians of the Pacific Coast.

III.

That the defendant has recognized many members of plaintiffs' family and has enrolled and allotted many members of said family, among whom are: the father of the plaintiffs, William A. Elliott, the paternal grandmother Agnes Elliott, the paternal

uncles and aunts, J. H. Elliott, George R. Elliott, J. Grant Elliott, Edmund C. Elliott, Charles G. Elliott, Louise E. Henry, Eliza L. Miles and Grace Heiner.

IV.

That the plaintiffs, as above set forth, are full blood brothers and sisters and that by reason thereof and the facts hereinafter set forth relative to the selection and denial of certain allotments of land upon the Quinaielt Indian Reservation, under respectively the same conditions and like circumstances, these plaintiffs have a common interest in the subject matter of this action and are affected in a similar manner.

V.

That the grounds upon which the Court's jurisdiction rests are as follows: That the plaintiffs are Indians and members of the Quinaielt Tribe of Indians, and are entitled under the treaty made and entered into between the United States and the Quinaielt Indians and other bands of Indians, and under the allotment acts of the United States, to an allotment of at least 80 acres, each, of land upon the said Quinaielt Indian Reserva- [227] tion in the State of Washington within this District. The jurisdiction of the Court further depends upon the Acts of August 15, 1894, 28 Stats. L., 305, as amended by the Act of February 6, 1901, 31 Stats. L. 760, giving the right to Indians to bring suits against the United States to establish their rights to an allotment of land.

VI.

That about two years ago a Special Allotting Agent was sent by the defendant, more particularly the Secretary of the Interior, to said Quinaielt Indian Reservation for the purpose of allotting lands upon said reservation to Indians entitled thereto, and that said special alloting agent is at this time engaged in alloting lands to those entitled thereto; and said plaintiffs in due course and in accordance with law, regularly proceeded to make selections for allotments of land upon said Quinaielt Reservation, which said selections for allotments are described in words and figures as follows, towit:—

Edna May Elliott,—E/2 SE/4 Sec. 30, T. 23 N., R. 12 W., W. M.

Ruth G. Elliott,—W/2 SE/4 Sec. 30, T. 23 N., R. 12 W., W. M.

William H. Elliott,—E/2 NE/4 Sec. 30, T. 23 N., R. 12 W., W. M.

John G. Elliott,—W/2 NE/4 Sec. 30, T. 23 N., R. 12 W., W. M.

Frank L. Elliott,—W/2 NW/4 Sec. 30, T. 23 N., R. 12 W., W. M.

Jewel M. Elliott,—E/2 NW/4 Sec. 30, T. 23 N., R. 12 W., W. M.

VII.

That thereafter, plaintiffs are informed and believe, said selections were regularly forwarded to the Secretary of the Interior at Washington, D. C., in accordance with law, and each and every step was regularly completed for the actual approval

and granting of said allotments and the issuance of the necessary patents therefor except only the approval of the Secretary [228] of the Interior. That recently the defendant, more particularly the Secretary of the Interior and the Commissioner of Indian Affairs, neglected, refused and declined to allot to said plaintiffs the identical allotments herein described or any allotments of land upon the Quinaielt Reservation whatsoever. That said denial and refusal of plaintiffs' rights to allotments was for no reason known to plaintiffs, but that such refusal and denial is arbitrary and without reason, and in no manner justified, and is a denial of a right of said plaintiffs as set forth by the Acts of Congress of the United States, its laws and treaties, and a refusal to perform a duty of said defendant as set forth in said laws and treaties.

VIII.

That said allotments selected by the plaintiffs herein are unallotted, unimproved, vacant Indian lands capable of being cleared and cultivated, duly surveyed by the United States Government and subject to selection and allotment under the laws of the United States.

IX.

That notwithstanding all the facts hereinbefore alleged, defendant, its officers and agents, have wrongfully failed, neglected and refused to allot the said lands to the plaintiffs herein, or to issue to said plaintiffs any trust or fee patent therefor, and have denied and excluded, and still deny and exclude plaintiffs herein from said lands, and have refused

and still refuse to let plaintiffs go upon or reside upon said lands or any portion thereof.

X.

That said plaintiffs are entitled to have said lands so selected by them allotted to them, and desire that the same be [229] allotted to them and that their rights be recognized, and that they be permitted to go upon, live upon, cultivate and improve said lands as their homes.

XI.

That plaintiffs waive answer under oath.

WHEREFORE, plaintiffs pray judgment as follows:—

1. That a judgment and decree be entered herein as provided by law in favor of these claimants to said 80 acre tracts of land hereinbefore described, and that said decree be properly certified by the Secretary of the Interior, and that plaintiffs be awarded said lands as their allotments and that they be adjudged and decreed to have full right, power and authority to go upon, live upon, cultivate and improve said lands as their homes, in all respects as provided by law.

2. That the plaintiffs have all other and further relief as is equitable and just.

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Solicitors for plaintiffs.

State of Washington,
County of Grays Harbor,—ss.

William A. Elliott being first duly sworn on oath

deposes and says: That he is the duly appointed and qualified guardian ad litem of Frank L. Elliott and Jewell M. Elliott, plaintiffs above named, and makes this verification for and on behalf of said minors as such guardian ad litem; that he has read and knows the contents of the foregoing Bill of Complaint and that the statements therein contained are true as he verily believes.

WILLIAM A. ELLIOTT.

Subscribed and sworn to before me this 7th day of June, 1927.

[Notary Seal] LULA LIVINGSTON,

Notary Public in and for the State of Washington, residing at Aberdeen.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Jun 14, 1927.

ED. M. LAKIN,
Clerk.

By E. M. L.,
Deputy. [230]

United States District Court, Western District of Washington, Southern Division.

No. 324-E

EDNA MAY ELLIOTT; RUTH G. ELLIOTT; WILLIAM H. ELLIOTT; JOHN G. ELLIOTT; and FRANK L. ELLIOTT and JEWELL M. ELLIOTT by WILLIAM A. ELLIOTT, guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

ANSWER.

Comes now the above named defendant by its attorney, and by way of answer to plaintiffs' bill of complaint, admits, denies and alleges as follows:

I.

Referring to paragraph I of plaintiffs' bill of complaint, defendant denies that plaintiffs are members of the Quinaielt Tribe of Indians; admits that said William A. Elliott was duly and in accordance with law appointed guardian ad litem of said plaintiffs by the above entitled court on the 14th day of June, 1927, and for lack of information, knowledge or belief, denies each and every other allegation therein contained.

II.

Referring to paragraph II, defendant admits that William A. Elliott is an enrolled and allotted Indian of the Quinaielt Indian Reservation in Wash-

ington; defendant admits each and every other material allegation contained therein.

III.

Referring to paragraph III, defendant admits the same. [231]

IV.

Referring to paragraph IV, the defendant not having sufficient knowledge or information, denies the same.

V.

Referring to paragraph V, defendant admits this Court's jurisdiction of plaintiffs; defendant denies each and every other material allegation therein contained.

VI.

Referring to paragraph VI, defendant admits that a Special Allotting Agent was sent to said Quinaielt Indian Reservation by the defendant for the purpose of allotting lands upon said Reservation to Indians entitled thereto; defendant denies each and every other material allegation contained therein.

VII.

Referring to paragraph VII, defendant admits that the said Commissioner of Indian Affairs has refused to allot lands to these plaintiffs; defendant denies each and every other material allegation contained therein.

VIII.

Referring to paragraph VIII, defendant admits that the lands described in paragraph VI or para-

graph VIII of plaintiffs' bill of complaint are unallotted, surveyed, unimproved, vacant Indian lands, subject to selection under the laws of the United States.

IX.

Referring to paragraph *Ix*, defendant admits that it has refused to allot the said lands to the plaintiffs, but denies that such action is wrongful.

X.

Referring to paragraph X, defendant denies each and every allegation therein contained.

WHEREFORE, having answered plaintiff's bill of complaint, defendant prays that said action be dismissed, and that it have and recover its costs herein. [232]

THOS. P. REVELLE,
United States Attorney.
DAVID L. SPAULDING,
Assistant United States Attorney.

United States of America,
Western District of Washington,
Southern Division,—ss.

DAVID L. SPAULDING, being first duly sworn, on oath deposes and says: That he is an Assistant United States Attorney for the Western District of Washington, and makes this verification for and on behalf of the United States of America, defendant herein; that he has read the foregoing

Answer; knows the contents thereof and believes the same to be true.

DAVID L. SPAULDING.

Subscribed and sworn to before me this 5th day of November, 1927.

[Seal] ALINE *ESTER,*

Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Nov 9 1927.

ED. M. LAKIN,
Clerk.
By E. R.,
Deputy. [233]

United States District Court, Western District of Washington, Southern Division.

No. 324-E

EDNA MAY ELLIOTT, et al.

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

STIPULATION.

IT IS HEREBY STIPULATED by and between the parties hereto that the following cases may be assigned by the Court for trial for the 27th day of December, 1927, at ten o'clock A. M., and heard in connection with other Indian allotment

cases in which the relatives of Edna May Elliott, et al, are involved, for the reason that said cases can be tried advantageously together and it will save large amounts of costs and much time of the Court:—

No. 324-E, Edna May Elliott, et al, v. United States,

No. 314-E, Lizzie Rolfson, et al, v. United States,

No. 325-E, Charles S. Elliott, Jr., et al. v. United States,

No. 321-E Dewey *Narichio,* et al, v. United States,

No. 320-E Mary Barichio Petit, et al, v. United States

No. 326-E Agnes Rubens, et al, v. United States,

No. 313-E, Bertha Evelyn Payne v. United States.

DATED this 6th day of December, 1927.

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Attorneys for plaintiffs.

JOHN T. McCUTCHEON,
Attorneys for defendant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, *Northern* Division, Dec 6 1927.

ED. M. LAKIN,
Clerk.
By E. R.,
Deputy. [234]

In the United States District Court for the Western District of Washington, Southern Division.

No. 324-E

EDNA MAY ELLIOTT; RUTH G. ELLIOTT; WILLIAM H. ELLIOTT; JOHN G. ELLIOTT; and FRANK L. ELLIOTT and JEWELL M. ELLIOTT, by WILLIAM A. ELLIOTT, guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

DECREE.

This cause came on to be heard at this term, the plaintiffs Edna May Elliott, Ruth G. Elliott, William H. Elliott and John G. Elliott appearing personally, and the plaintiffs Frank L. Elliott and Jewell M. Elliott, minors, appearing by their guardian ad litem William A. Elliott, and all of the plaintiffs appearing by their counsel Stuart H. Elliott, and H. G. & Dix H. Rowland, and the defendant appearing by its counsel Anthony Savage, U. S. District Attorney, Seattle, Wash., David Spaulding, Asst. U. S. District Attorney, Seattle, Wash., John T. McCutcheon, Asst. U. S. District Attorney, Tacoma, James T. Rahily Associate Counsel, Washington, D. C.; and the court having taken the matter under advisement and rendered his memorandum decision herein after said cause had been submitted to the

court upon written briefs, and thereupon upon consideration thereof it is

ORDERED, ADJUDGED AND DECREED: That plaintiffs Edna May Elliott, Ruth G. Elliott, William H. Elliott, John G. Elliott, Frank L. Elliott and [235] Jewell M. Elliott be and they are hereby entitled to the lands heretofore selected by them, situate upon the Quinaielt Indian Reservation, within this District, in Grays Harbor County, in the State of Washington, to-wit:

Edna May Elliott—The East half of the Southeast quarter of Section Thirty (30), Township Twenty-three (23) North, Range Twelve (12) West, Willamette Meridian.

Ruth G. Elliott—The West half of the Southeast quarter of Section Thirty (30), Township Twenty-three (23) North, Range Twelve West, Willamette Meridian.

William H. Elliott—The East half of the Northeast quarter of Section Thirty (30), Township Twenty-three (23) North, Range Twelve (12) West, Willamette Meridian.

John G. Elliott—The West half of the Northeast quarter of Section Thirty (30), Township Twenty-three (23) North, Range Twelve (12) West, Willamette Meridian.

Frank L. Elliott—The West half of the Northwest quarter of Section Thirty (30), Township Twenty-three (23) North, Range Twelve (12) West, Willamette Meridian.

Jewell M. Elliott—The East half of the Northwest quarter of Section Thirty (30), Town-

ship Twenty-three (23), North, Range Twelve (12) West, Willamette Meridian

as allotments to be held and owned by said plaintiffs, in all respects as provided by law.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents, be and they are hereby ordered and directed to issue to said plaintiffs, certificates of allotment of said lands heretofore described, said certificates of allotment to be in effect and to award to said plaintiffs all of the rights to which said plaintiffs are entitled under and by virtue of the laws of the United States.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents and all persons [236] claiming by, through or under them, be and they are hereby forever barred and estopped from ever claiming or asserting that said plaintiffs, their heirs, executors, administrators, and assigns, are not entitled to said land as and for their allotment, with full right to use, build upon, clear, improve and occupy the same in all respects as provided by law; to all of which the defendant excepts and its exception is allowed.

Done in open court this 24th day of December A. D., 1928.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: O. K. as to form.

D. SPAULDING,
(Asst. U. S. Attorney).

[Endorsed]: Filed in the United States District

Court, Western District of Washington, Southern Division, Dec 24 1928.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [237]

United States District Court, Western District of Washington, Southern Division.

No. 324-E

EDNA MAY ELLIOTT, et al.

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

ASSIGNMENTS OF ERROR.

Comes now the above named defendant, the United States of America, by and through its attorneys, Anthony Savage, United States Attorney for the Western District of Washington, and John T. McCutcheon and Tom DeWolfe, Assistant United States Attorney for said District, and James T. Rahily, Associate Counsel, and respectfully submits the following Assignments of Error upon which it relies in support of its appeal from the judgment and decree entered on the 24th day of December, 1928, in said cause, in the District Court of the United States for the Southern Division of the Western District of Washington, and under which Assignments

of Error said appellant seeks reversal of the decision, judgment and decree of said Court:

I.

That the District Court erred in holding and finding that the lands selected for allotment by the plaintiffs were subject to selection and allotment under the laws of the United States, and that the plaintiffs are lawfully entitled to have such lands allotted to them.

II.

That the District Court erred in holding and finding that the officers and agents of the United States of [240] America have wrongfully failed, neglected and refused to allot the said lands to the said plaintiffs, or to issue to the plaintiffs any trust or fee patent therefor.

III.

That the District Court erred in adjudging that the plaintiffs were entitled to a decree adjudging and decreeing that the said plaintiffs are entitled to the lands selected for their allotments, and that the plaintiffs are entitled to have said lands allotted to them by the defendant, its officers and agents.

IV.

That the District Court erred in concluding, holding, and finding that the plaintiffs are entitled to a decree estopping the defendant, its officers and agents, from hereafter interfering with the plaintiffs in their rights to possession of said lands and their rights to improve the same, and estopping the de-

fendant from hereafter claiming or asserting that said plaintiffs are not entitled to go upon, clear, improve, and build upon said lands.

V.

That the District Court erred in holding and finding that the general allotment statutes and acts do not apply and that the Act of March 4, 1911, is a special allotment act, when said Act of March 4, 1911, expressly provides that allotments are made under the provisions of the allotment laws of the United States.

VI.

That the District Court erred in holding and finding that the Indian tribes who refused to become parties [241] to the Treaty of July 1, 1855, and January 23, 1856, were affiliated therein with the Indian tribes that did participate in said Treaty and actually agreed to the same and signed the same.

VII.

That the District Court erred in holding and finding that the decision and action of the Indian Council of 1922 as to recognition and adoption of members was in itself authoritative, notwithstanding the fact that said proceedings of said council were in no part approved by the Secretary of the Interior of the United States of America.

VIII.

That the District Court erred in holding and finding that under the Act of June 7, 1897, where an Indian woman who was recognized tribally at that

time and married to a white husband has children, that the offspring of said children are entitled to receive allotments under the law.

IX.

That the District Court erred in holding and finding that the rights of children of a white man and an Indian woman in tribal property embraces the children of the mother who was living at the time of the passage of the Act of June 7, 1897, and was not then recognized by the tribe as one of its members.

X.

That the District Court erred in holding and finding that the plaintiffs and their parents had been properly adopted into the Quinaielt tribe by the adoption action of the Indian Council of said tribe of 1912 when said action was void for not having been approved by the Secretary of the Interior of the United States. [242]

XI.

That the District Court erred in holding and finding that the plaintiffs who were born of a marriage prior to 1897 between a white man and a woman of Indian blood who was living on June 7, 1897, and not then recognized as a member of the tribal Indians of the Quinaielt Reservation, were entitled to allotments thereon.

XII.

That the District Court erred in entering decree herein on February 5, 1929, awarding allotments to the plaintiffs herein when the evidence adduced at

the time of the trial herein was insufficient to sustain said decree and exceptions to said decree having been timely noted.

XIII.

That the District Court erred in holding and decreeing that the defendant, its officers and agents, are directed to issue to the plaintiffs, certificates of allotment of the lands claimed to be selected by said plaintiffs.

ANTHONY SAVAGE,
United States Attorney.

JOHN T. McCUTCHEON,
Assistant United States Attorney.

TOM DeWOLFE,
Assistant United States Attorney.

[Endorsed]: Received a copy of the within Assignments this 19th day of March 1929.

STUART H. ELLIOTT &
H. G. & DIX H. ROWLAND,
Attorney for plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, *Northern* Division, Mar 20 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [243]

United States District Court, Western District of Washington, Southern Division.

No. 324-E

EDNA MAY ELLIOTT, et al.

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER ALLOWING APPEAL.

On the application of the defendant herein it is hereby ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and decree heretofore entered and filed herein on the 24th day of December, 1928, be, and the same is hereby allowed.

It is further ORDERED that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

DONE in open court this 20th day of March, 1929.

J. STANLEY WEBSTER,
United States District Judge.

[Endorsed]: Received a copy of the within Order this 20th day of Mar 1929.

STUART H. ELLIOTT &
H. G. & DIX H. ROWLAND,
Attorney for plaintiffs.

[Endorsed]: Filed in the United States District

Court, Western District of Washington, Southern Division, Mar 20 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [244]

United States District Court, Western District of Washington, Southern Division.

No. 325-E

CHAS. G. ELLIOTT, Jr., ANNA MARIE ELLIOTT, HENRY ELLIOTT, RALPH G. ELLIOTT, and FRANCES ELLIOTT, Minors, by CHAS. G. ELLIOTT, guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

BILL OF COMPLAINT.

To the Honorable Judges of the Above Entitled Court, Sitting in Equity:—

The plaintiffs complain of the defendant, and for cause of action allege and say:—

I.

That the plaintiffs are and at all times since their birth have been persons of part Indian blood, and members of the Quinaielt Tribe of Indians of Grays

Harbor County, Washington, within this District; that all the above named plaintiffs are minors and that the said Chas. G. Elliott was duly and in accordance with law appointed guardian ad litem of said plaintiffs by the above entitled court on the 14th day of June 1927, and he duly qualified as such and is now acting as such guardian ad litem upon behalf of said plaintiffs.

II.

That the father of said plaintiffs is named Chas. G. Elliott and he *isaduly* enrolled and allotted Indian of the Quinaielt Indian Reservation in Washington, and all of the plaintiffs herein were born and reared in Wahkiakum County, Wash- [245] ington, within this District, and now reside therein at the Indian settlement Dahlia in said County. That the said Chas. G. Elliott and all of the plaintiffs herein have at all times since their birth continuously lived as Indians and associated and affiliated with the Quinaielt Indians and associated and affiliated tribes and bands of Indians, and are fish eating Indians of the Pacific Coast.

III.

That the defendant has recognized many members of plaintiffs' family and has enrolled and allotted many members of said family, among whom are: the father of the plaintiffs, Chas. G. Elliott, the paternal grandmother Agnes Elliott, the paternal uncles and aunts, J. H. Elliott, George R. Elliott, J. Grant El-

liott, Edmund C. Elliott, William A. Elliott, Louise E. Henry, Eliza L. Miles and Grace Heiner.

IV.

That the plaintiffs, as above set forth, are full blood brothers and sisters and that by reason thereof and the facts hereinafter set forth relative to the selection and denial of certain allotments of land upon the Quinaielt Indian Reservation, under respectively the same conditions and like circumstances, these plaintiffs have a common interest in the subject matter of this action and are affected in a similar manner.

V.

That the grounds upon which the Court's jurisdiction rests are as follows: That the plaintiffs are Indians and members of the Quinaielt Tribe of Indians, and are entitled under the treaty made and entered into between the United States and the Quinaielt Indians and other bands of Indians, and under the [246] allotment acts of the United States, to an allotment of at least 80 acres, each, of land upon the said Quinaielt Indian Reservation in the State of Washington within this District. The jurisdiction of the Court further depends upon the Acts of August 15, 1894, 28 Stat. L., 305, as amended by the Act of February 6, 1901, 31 Stat. L., 760, giving the right to Indians to bring suits against the United States to establish their rights to an allotment of land.

VI.

That about two years ago a Special Alloting Agent was sent by the defendant, more particularly the Sec-

retary of the Interior, to said Quinaielt Indian Reservation for the purpose of alloting lands upon said reservation to Indians entitled thereto, and that said special alloting agent is at this time engaged in alloting lands to those entitled thereto; and said plaintiffs in due course and in accordance with law, regularly proceeded to make selections for allotments of land upon said Quinaielt Reservation, which said selections for allotments are described in words and figures as follows, towit:—

Chas. G. Elliott, Jr.,—W/2 SE/4 Sec 11 T 22 N, R 13 W, W. M.

Anna Marie Elliott,—W/2 NW/4 Sec 12 T 22 N, R 13 W, W. M.

Henry Elliott,—E/2 SW/4 Sec 12 T 22 N, R 13 W, W. M.

Ralph G. Elliott,—E/2 SE/4 Sec 12 T 22 N, R 13 W, W. M.

Frances Elliott,—E/2 SW/4 Sec 13 T 22 N, R 13 W, W. M.

VII.

That thereafter, plaintiffs are informed and believe, said selections were regularly forwarded to the Secretary of the Interior at Washington, D. C., in accordance with law, and each and every step was regularly completed for the actual approval [247] and granting of said allotments and the issuance of the necessary patents therefor except only the approval of the Secretary of the Interior. That recently the defendant, more particularly the Secretary of the Interior and the Commissioner of Indian Affairs, neglected, refused and declined to allot to

said plaintiffs the identical allotments herein described or any allotments of land upon the Quinaielt Reservation whatsoever. That said denial and refusal of plaintiffs' rights to allotments was for no reason known to plaintiffs, but that such refusal and denial is arbitrary and without reason and in no manner justified, and is a denial of a right of said plaintiffs as set forth by the acts of Congress of the United States, its laws and treaties, and a refusal to perform a duty of said defendant as set forth in said laws and treaties.

VIII.

That said allotments selected by the plaintiffs herein are unallotted, unimproved, vacant Indian lands capable of being cleared and cultivated, duly surveyed by the United States Government and subject to selection and allotment under the laws of the United States.

IX.

That notwithstanding all the facts hereinbefore alleged, defendant, its officers and agents, have wrongfully failed, neglected and refused to allot the said lands to the plaintiffs herein, or to issue to said plaintiffs any trust or fee patent therefor, and have denied and excluded, and still deny and exclude plaintiffs herein from said lands, and have refused and still refuse to let plaintiffs go upon or reside upon said lands or any portion thereof. [248]

X.

That said plaintiffs are entitled to have said lands so selected by them allotted to them, and desire that

the same be allotted to them and that their rights be recognized, and that they be permitted to go upon, live upon, cultivate and improve said lands as their homes.

XI.

That plaintiffs waive answer under oath.

WHEREFORE, plaintiffs pray judgment as follows:

1. That a judgment and decree be entered herein as provided by law in favor of these claimants to said 80 acre tracts of land hereinbefore described, and that said decree be properly certified by the Secretary of the Interior, and that plaintiffs be awarded said lands as their allotments and that they be adjudged and decreed to have full right, power and authority to go upon, live upon, cultivate and improve said lands as their homes, in all respects as provided by law.

2. That the plaintiffs have all other and further relief as is equitable and just.

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Solicitors for plaintiffs.

State of Washington,
County of Pacific,—ss.

Chas. G. Elliott being first duly sworn on oath deposes and says: That he is the duly appointed and qualified guardian ad litem of the plaintiffs above named and makes this verification for and on behalf of said minors as such guardian ad litem; that he has read and knows the contents of the foregoing Bill

of Complaint and that the statements therein contained are true as he verily believes.

CHAS. G. ELLIOTT.

Subscribed and sworn to before me this 20 day of April, 1927.

[Notary Seal] J. W. MATTSON,
Notary Public in and for the State of Washington, residing at Tacoma, Wash.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Jun 14, 1927.

ED. M. LAKIN,
Clerk.
By E. M. L.,
Deputy. [249]

United States District Court, Western District of Washington, Southern Division.

No. 325-E

CHAS. G. ELLIOTT, Jr., ANNA MARIE ELLIOTT, HENRY ELLIOTT, RALPH G. ELLIOTT, and FRANCES ELLIOTT, Minors, by CHAS. G. ELLIOTT, guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

ANSWER.

Comes now the above named defendant, by its attorneys, and answering the plaintiffs' Bill of Complaint, admits, denies and alleges as follows:

I.

Referring to paragraph I of said Bill of Complaint, defendant denies that the plaintiffs are members of the Quinaielt Tribe of Indians; admits that said Chas. G. Elliott was duly and in accordance with law appointed guardian ad litem of said plaintiffs by the above entitled court on the 14th day of June, 1927, and for lack of information, knowledge or belief, denies each and every other allegation therein contained.

II.

Answering paragraph II of plaintiffs' Bill of Complaint, the defendant admits that Chas G. Elliott was enrolled and allotted land on the Quinaielt Reservation in Washington, by the decree of the United States District Court for the Western District of Washington, Southern Division, and the defendant denies that Dahlia is an Indian Settlement. Defendant denies each and every other material allegation [250]

III.

In answer to paragraph III of said Complaint, defendant admits the same.

IV.

For answer to paragraph IV, the defendant has not sufficient information, knowledge or belief, and therefore denies the same.

V.

For answer to paragraph V of plaintiffs' Bill of Complaint, the defendant denies that plaintiffs are

members of the Quinaielt Tribe of Indians, or are members of other Tribes of Indians, entitled under the Treaty made and entered into between the United States and the Quinaielt Indians, and denies that the plaintiffs are entitled to the allotments under said Treaty. Defendant admits all other material allegations contained therein.

VI.

In answer to paragraph VI of said Bill of Complaint, the defendant admits that a special allotting agent was sent to said Quinaielt Indian Reservation for the purpose of allotting lands upon said reservation to Indians entitled thereto. The defendant denies each and every other allegation contained therein.

VII.

In answer to paragraph VII, the defendant denies each and every material allegation contained therein.

VIII.

In answer to paragraph VIII of plaintiffs' Bill of Complaint, the defendant admits the same to be true. [251]

IX.

In answer to paragraph IX of plaintiffs' Bill of Complaint, defendant admits the acts alleged therein, but denies that said acts are wrongful.

X.

Answering paragraph X of plaintiffs' Bill of Complaint, defendant denies that plaintiffs are entitled to have said lands selected by them or allotted to them. The defendant admits the plaintiffs' desire that the same be allowed to them. The defendant

denies the plaintiffs' desire to go upon, live upon, cultivate and improve said lands as their home.

WHEREFORE having answered plaintiffs' Bill of Complaint, defendant prays that said action be dismissed, and that it have and recover its costs herein.

THOS. P. REVELLE,
United States Attorney.
DAVID L. SPAULDING,
Assistant United States Attorney.

United States of America,
Western District of Washington,
Southern Division,—ss.

DAVID L. SPAULDING, being first duly sworn on oath, deposes and says: That he is an Assistant United States Attorney for the Western District of Washington, and makes this verification for and on behalf of the United States of America, defendant herein; that he has read the foregoing answer; knows the contents thereof, and believes the same to be true.

DAVID L. SPAULDING.

Subscribed and sworn to before me this 7th day of November, 1927.

[Seal] ALINE LSLER,
Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Nov 11 1927.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [252]

In the United States District Court for the Western District of Washington, Southern Division.

No. 325-E

CHAS. G. ELLIOTT, Jr., ANNA MARIE ELLIOTT, HENRY ELLIOTT, RALPH G. ELLIOTT, and FRANCES ELLIOTT, Minors, by CHAS. G. ELLIOTT, guardian ad litem,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

DECREE.

This cause came on to be heard at this term, the plaintiffs Chas. G. Elliott, Jr., Anna Marie Elliott, Henry Elliott, Ralph G. Elliott and Frances Elliott, minors, by Chas. G. Elliott, guardian ad litem, appearing personally, and by their counsel Stuart H. Elliott and H. G. and Dix H. Rowland, and the defendant appearing by its counsel Anthony Savage, U. S. District Attorney, Seattle, Wash., David Spaulding, Asst. U. S. District Attorney, Seattle, Wash., John T. McCutcheon, Asst. U. S. Dist. Attorney, Tacoma, James T. Rahily, Associate Counsel, Washington, D. C.; and the court having taken the matter under advisement and rendered his memorandum decision herein after said cause had been submitted to the court upon written briefs, and thereupon upon consideration thereof it is

ORDERED, ADJUDGED AND DECREED:

That plaintiffs Chas. G. Elliott, Jr., Anna Marie Elliott, Henry Elliott, Ralph G. Elliott and Frances Elliott, Minors, be and they are hereby entitled to the lands [253] *lands* heretofore selected by them, situate upon the Quinaielt Indian Reservation, within this District, in Grays Harbor County, in the State of Washington, to-wit:

Chas. G. Elliott Jr.,—The West half of the Southeast Quarter of Section Eleven (11), Township Twenty-two (22) North, Range Thirteen (13) West, Willamette Meridian.

Anna Marie Elliott—The West half of the Northwest quarter of Section Twelve (12), Township Twenty-two (22) North, Range Thirteen (13) West, Willamette Meridian.

Henry Elliott—The East half of the Southwest quarter of Section Twelve (12), Township Twenty-two (22) North, Range Thirteen (13) West, Willamette Meridian.

Ralph G. Elliott—The East half of the Southeast quarter of Section Twelve (12), Township Twenty-two (22) North, Range Thirteen (13) West, Willamette Meridian.

Frances Elliott—The East half of the Southwest quarter of Section Thirteen (13), Township Twenty-two (22) North, Range Thirteen (13) West, Willamette Meridian

as allotments to be held and owned by each of said plaintiffs, respectively, in all respects as provided by law.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents be and they are hereby ordered and directed to issue to each of the said plaintiffs, certificates of allotment of said land so allotted to them, said certificates of allotment to be in effect and to award to said plaintiffs all of the rights to which said plaintiffs are entitled under and by virtue of the laws of the United States.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents and all persons claiming by, through or under them, be and they are hereby forever barred and estopped from ever claiming or asserting that said plaintiffs, their heirs, executors, administrators and assigns, are not entitled to said lands as and for their [254] allotments, with full right to use, build upon, clear, improve, and occupy the same, in all respects as provided by law; to all of which defendant excepts and its exception is allowed.

Done in open court this 24th day of December A. D. 1928.

EDWARD E. CUSHMAN.

[Endorsed]: O. K. as to form.

D. SPAULDING,
(Asst. U. S. Attorney).

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec 24 1928.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [255]

United States District Court, Western District of Washington, Southern Division.

No. 325-E.

CHAS. G. ELLIOTT, JR., et al., Plaintiffs,

vs.

THE UNITED STATES OF AMERICA, Defendant.

ASSIGNMENTS OF ERROR.

Comes now the above named defendant, the United States of America, by and through its attorneys, Anthony Savage, United States Attorney for the Western District of Washington, and John T. McCutcheon and Tom DeWolfe, Assistant United States Attorneys for said District, and James T. Rahily, Associate Counsel, and respectfully submits the following Assignments of Error upon which it relies in support of its appeal from the judgment and decree entered on the 24th day of December, 1928, in said cause, in the District Court of the United States for the Southern Division of the Western District of Washington, and under which Assignments of Error said appellant seeks reversal of the decision, judgment and decree of said Court:

I.

That the District *Coyrt* erred in holding and finding that the lands selected for allotment by the plaintiffs were subject to selection and allotment under the laws of the United States, and that the plaintiffs are lawfully entitled to have such lands allotted to them.

II.

That the District Court erred in holding and finding that the officers and agents of the United States of [258] America have wrongfully failed, neglected and refused to allot the said lands to the said plaintiffs, or to issue to the plaintiffs any trust or fee patent therefor.

III.

That the District Court erred in adjudging that the plaintiffs were entitled to a decree adjudging and decreeing that the said plaintiffs are entitled to the lands selected for their allotments, and that the plaintiffs are entitled to have said lands allotted to them by the defendant, its officers and agents.

IV.

That the District Court erred in concluding, holding, and finding that the plaintiffs are entitled to a decree estopping the defendant, its officers and agents, from hereafter interfering with the plaintiffs in their rights to possession of said lands and their rights to improve the same, and estopping the defendant from hereafter claiming or asserting that said plaintiffs are not entitled to go upon, clear, improve, and build upon said lands.

V.

That the District Court erred in holding and finding that the general allotment statutes and acts do not apply and that the Act of March 4, 1911, is a special allotment act, when said Act of March 4, 1911, expressly provides that allotments are made under the provisions of the allotment laws of the United States.

VI.

That the District Court erred in holding and finding that the Indian tribes who refused to become parties to the Treaty of July 1, 1855, and January 23, 1856, were affiliated therein with the Indian tribes that did participate in said Treaty and actually agreed to the same and [259] signed the same.

VII.

That the District Court erred in holding and finding that the decision and action of the Indian Council of 1922 as to recognition and adoption of members was in itself authoritative, notwithstanding the fact that said proceedings of said council were in no part approved by the Secretary of the Interior of the United States of America.

VIII.

That the District Court erred in holding and finding that under the Act of June 7, 1897, where an Indian woman who was recognized tribally at that time and married to a white husband has children, that the offspring of said children are entitled to receive allotments under the law.

IX.

That the District Court erred in holding and finding that the rights of children of a white man and an Indian woman in tribal property embraces the children of the mother who was living at the time of the passage of the Act of June 7, 1897, and was not then recognized by the tribe as one of its members.

X.

That the District Court erred in holding and find-

ing that the plaintiffs and their parents had been properly adopted into the Quinaielt tribe by the adoption action of the Indian Council of said tribe of 1912 when said action was void for not having been approved by the Secretary of the Interior of the United States.

XI.

That the District Court erred in holding and finding that the plaintiffs who were born of a marriage prior [260] to 1897 between a white man and a woman of Indian blood who was living on June 7, 1897, and not then recognized as a member of the tribal Indians of the Quinaielt Reservation, were entitled to allotments thereon.

XII.

That the District Court erred in entering decree herein on February 5, 1929, awarding allotments to the plaintiffs herein when the evidence adduced at the time of the trial herein was insufficient to sustain said decree and exceptions to said decree having been timely noted.

XIII.

That the District Court erred in holding and decreeing that the defendant, its officers and agents, are directed to issue to the plaintiffs, certificates of allotment of the lands claimed to be selected by said plaintiffs.

ANTHONY SAVAGE,
United States Attorney.
JOHN T. McCUTCHEON,
Assistant United States Attorney.
TOM DE WOLFE,
Assistant United States Attorney.

[Endorsed]: Received a copy of the within Assignment this 19th day of March, 1929.

STUART H. ELLIOTT &
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, May 20, 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [261]

United States District Court, Western District of Washington, Southern Division.

No. 325-E.

CHARLES G. ELLIOTT, et al.,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

ORDER ALLOWING APPEAL

On the application of the defendant herein it is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and decree heretofore entered and filed herein on the 24th day of December, 1928, be and the same is hereby allowed.

It is further ordered that a certified transcript of the record, testimony, exhibits, stipulations and all

proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

DONE IN OPEN COURT this 20th day of March, 1929.

J. STANLEY WEBSTER,
Judge.

[Endorsed]: Received a copy of the within Order this 20th day of March, 1929.

STUART H. ELLIOTT &
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar 20, 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [262]

United States District Court, Western District of Washington, Southern Division.

No. 326-E

AGNES RUBENS; LOUISE HENRY PETERSON; MARY HENRY HAGEN; CHRIS HENRY, JR.; and CHRISTINE HENRY and JUNE HENRY, Minors, by LOUISE E. HENRY, Guardian ad litem,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

BILL OF COMPLAINT.

To the Honorable Judges of the Above Entitled Court, Sitting in Equity:—

The plaintiffs complain of the defendant, and for cause of action allege and say:—

I.

That the plaintiffs are and at all times since their birth have been persons of part Indian blood, and members of the Quinaielt Tribe of Indians of Grays Harbor County, Washington, within this District; that the above named plaintiffs Agnes Rubens, Louise Henry Peterson, Mary Henry Hagen, and Chris Henry, Jr., are over the age of twenty-one years; that plaintiffs Christine Henry and *June Henry* are minors and that the said Louise E. Henry was duly and in accordance with law appointed guardian ad litem of said plaintiffs by the above entitled court on the 14th day of June, 1927, and she duly qualified as such and is now acting as such guardian ad litem upon behalf of said plaintiffs. [263]

II.

That the mother of said plaintiffs is named Louise E. Henry and she is a duly enrolled and allotted Indian of the Quinaielt Indian Reservation in Washington, and all of the plaintiffs herein were born and reared in Wahkiakum County, Washington, within this District, and now reside therein at the Indian settlement Dahlia in said county, with the exception of Mary Henry Hagen who now resides at Hoquiam in Grays Harbor County, Washington. That the

said Louise E. Henry and all of the plaintiffs herein have at all times since their birth continuously lived as Indians and associated and affiliated with the Quinaielt Indians and associated and affiliated tribes and bands of Indians, and are fish eating Indians of the Pacific Coast.

III.

That the defendant has recognized many members of plaintiffs' family and has enrolled and allotted many members of said family, among whom are: the mother of the plaintiffs, Louise E. Henry, the maternal grandmother Agnes Elliott, the maternal uncles and aunts, J. H. Elliott, George R. Elliott, J. Grant Elliott, Eliza L. Miles and Grace Heinet.

IV.

That the plaintiffs, as above set forth, are full blood brothers and sisters, and that by reason thereof and the facts hereinafter set forth relative to the selection and denial of certain allotments of land upon the Quinaielt Indian Reservation, under respectively the same conditions and like circumstances, these plaintiffs have a common interest in the subject matter of this action and are affected in a similar manner. [264]

V.

That the ground upon which the Court's jurisdiction rests are as follows: That the plaintiffs are Indians and members of the Quinaielt Tribe of Indians, and are entitled under the treaty made and entered into between the United States and the Quinaielt Indians and other bands of Indians, and under

the allotment acts of the United States, to an allotment of at least 80 acres, each, of land upon the said Quinaielt Indian Reservation in the State of Washington within this District. The jurisdiction of the Court further depends upon the Acts of August 15, 1894, 28 Stat. L., 305, as amended by the Act of February 6, 1901, 31 Stat. L., 760, giving the right to Indians to bring suits against the United States to establish their rights to an allotment of land.

VI.

That about two years ago a Special Alloting Agent was sent by the defendant, more particularly the Secretary of the Interior, to said Quinaielt Indian Reservation for the purpose of alloting lands upon said reservation to Indians entitled thereto, and that said special alloting agent is at this time engaged in alloting lands to those entitled thereto; and said plaintiffs in due course and in accordance with law, regularly proceeded to make selections for allotments of land upon said Quinaielt Reservation, which said selections for allotments are destribed in words and figures as follows, towit:—

Agnes Rubens,—W/2 SE/4 Sec. 14 T 22 N. R 13 W. W. M.

Louise Henry Peterson,—E/2 SE/4 Sec 23 T 22 N R 13 W. W. M.

Mary Henry Hagen, SE/4 NE/4 and NE/4 SE/4 Sec 29 T 22 N R 12 W. W. M.

Chris Henry, Jr.,—S/2 SE/4 Sec 10 T 22 N R 13 W. W. M. [265]

Christine Henry,—E/2 SE/4 Sec 13 T 22 N R 13 W. W. M.

June Henry,—N/2 SW/4 Sec 20 T 22 N R 12 W. W. M.

VII.

That thereafter, plaintiffs are informed and believe, said selections were regularly forwarded to the Secretary of the Interior at Washington, D. C., in accordance with law, and each and every step was regularly completed for the actual approval and granting of said allotments and the issuance of the necessary patents therefor except only the approval of the Secretary of the Interior. That recently the defendant, more particularly the Secretary of the Interior and the Commissioner of Indian Affairs, neglected, refused and declined to allot to said plaintiffs the identical allotments herein described or any allotments of land upon the Quinaielt Reservation whatsoever. That said denial and refusal of plaintiffs' rights to allotments was for no reason known to plaintiffs, but that such refusal and denial is arbitrary and without reason and in no manner justified, and is a denial of a right of said plaintiffs as set forth by the acts of Congress of the United States, its laws and treaties, and a refusal to perform a duty of said defendant as set forth in said laws and treaties.

VIII.

That said allotments selected by the plaintiffs herein are unallotted, unimproved, vacant Indian lands capable of being cleared and cultivated, duly surveyed

by the United States Government and subject to selection and allotment under the laws of the United States.

IX.

That notwithstanding all the facts hereinbefore alleged, defendant, its officers and agents, have wrongfully failed, [266] neglected and refused to allot the said lands to the plaintiffs herein, or to issue to said plaintiffs any trust or fee patent therefor, and have denied and excluded, and still deny and exclude plaintiffs herein from said lands, and have refused and still refuse to let plaintiffs go upon or reside upon said lands or any portion thereof.

X.

That said plaintiffs are entitled to have said lands so selected by them allotted to them, and desire that the same be allotted to them and that their rights be recognized, and that they be permitted to go upon, live upon, cultivate and improve said lands as their homes.

XI.

That plaintiffs waive answer under oath.

WHEREFORE, plaintiffs pray judgment as follows:

1. That a judgment and decree be entered herein as provided by law in favor of these claimants to said 80 acre tracts of land hereinbefore described, and that said decree be properly certified by the Secretary of the Interior, and that plaintiffs be awarded said lands as their allotments and that they be adjudged and decreed to have full right, power and authority to go

upon, live upon, cultivate and improve said lands as their homes, in all respects as provided by law.

2. That the plaintiffs have all other and further relief as is equitable and just.

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Solicitors for plaintiffs. [267]

State of Washington,
County of Pacific,—ss.

LOUISE E. HENRY being first duly sworn on oath deposes and says: That she is the duly appointed and qualified guardian ad litem of the minor plaintiffs above named and makes this verification for and on behalf of said minors as such guardian ad litem; that she has read and knows the contents of the foregoing Bill of Complaint and that the statements therein contained are true as she verily believes.

Her Mark X,
LOUISE E. HENRY.
By Agnes Rubens.

Subscribed and sworn to before me this 19th day of April, 1927.

[Seal] J. W. MATTSON,
Notary Public in and for the State of Washington, residing at Altoona, Wash.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, June 14, 1927.

ED. M. LAKIN,
Clerk.
By E. M. L.,
Deputy. [268]

United States District Court, Western District of Washington, Southern Division.

No. 326-E

AGNES RUBENS, LOUISE HENRY PETERSON, MARY HENRY HAGEN, CHRIS HENRY, Jr., and CHRISTINE HENRY and JUNE HENRY, Minors, by LOUISE E. HENRY, guardian ad litem.

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

ANSWER.

Comes now the above named defendant by its attorney, and by way of answer to plaintiffs' bill of complaint, admits, denies and alleges as follows:

I.

Referring to paragraph I of plaintiffs' bill of complaint, defendant denies that plaintiffs are members of the Quinaielt Tribe of Indians; defendant admits each and every other material allegation contained therein.

II.

Referring to paragraph II, defendant admits that the mother of said plaintiffs is named Louise E. Henry, and that said mother is an enrolled and allotted Indian of the Quinaielt Indian Reservation; defendant denies each and every other material allegation contained therein.

III.

Referring to paragraph III, defendant admits every material allegation contained therein. [269]

IV.

Referring to paragraph IV, defendant has not sufficient knowledge upon which to base an opinion, and therefore denies the same.

V.

Referring to paragraph V, defendant admits the jurisdiction of this court, and denies each and every other material allegation contained therein.

VI.

Referring to paragraph VI, defendant admits that a Special Allotting Agent was sent to the Quinaielt Reservation, for the purpose of making allotments to Indians entitled thereto; defendant denies each and every other material allegation contained therein.

VII.

Referring to paragraph VII, defendant denies the same.

VIII.

Referring to paragraph VIII, defendant admits that the lands mentioned in paragraph VI of plaintiffs' Bill of Complaint are surveyed, unallotted, unimproved, vacant Indian lands, and subject to selection and allotment under the laws of the United States.

IX.

Referring to paragraph IX, defendant admits that

it has refused to allot said lands to the plaintiffs herein, but denies that said refusal was wrongful.

X.

Referring to paragraph X, defendant denies the same.

WHEREFORE, having answered plaintiffs' bill of complaint, defendant prays that said action be dismissed, and that it have and recover its costs herein.

[270]

THOS. P. REVELLE,
United States Attorney.

DAVID L. SPAULDING,
Assistant United States Attorney.

United States of America,
Western District of Washington,
Southern Division,—ss.

DAVID L. SPAULDING, being first duly sworn, on oath deposes and says: That he is an Assistant United States Attorney for the Western District of Washington, and makes this verification for and on behalf of the United States of America, defendant herein; that he has read the foregoing Answer; knows the contents thereof and believes the same to be true.

DAVID L. SPAULDING.

Subscribed and sworn to before me this 5th day of Nov. 1927.

[Seal] ALINE ESLER,
Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District

Court, Western District of Washington, Southern Division, Nov. 11, 1927.

ED. M. LAKIN,
Clerk.
By E. R.,
Deputy. [271]

In the United States District Court for the Western District of Washington, Southern Division.

No. 326-E

AGNES RUBENS; LOUISE HENRY PETERSON; MARY HENRY HAGEN; CHRIS HENRY, JR.; and CHRISTINE HENRY and JUNE HENRY, Minors, by LOUISE E. HENRY,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

DECREE.

This cause came on to be heard at this term, the plaintiffs Agnes Rubens, Louise Henry Peterson, Mary Henry Hagen and Chris Henry, Jr., appearing personally and the plaintiffs Christine Henry and June Henry, Minors, appearing by their guardian ad litem Louise E. Henry, and all of the plaintiffs appearing by their counsel Stuart H. Elliott, and H. G. & Dix H. Rowland, and the defendant appearing by its counsel Anthony Savage, U. S. District Attorney, Seattle, Wash., David Spaulding, Asst. U. S. District Attorney, Seattle, Wash., John T. McCutcheon, Asst.

U. S. District Attorney, Tacoma, James T. Rahily, Associate Counsel, Washington, D. C.; and the court having taken the matter under advisement and rendered his memorandum decision herein after said cause had been submitted to the court upon written briefs, and thereupon upon consideration thereof it is

ORDERED, ADJUDGED AND DECREED:

That plaintiffs be and they are hereby entitled to the lands heretofore selected by them, situate upon the Quinaielt Indian Reservation, within this District, in Grays [272] Harbor County, in the State of Washington, to-wit:

Agnes Rubens—The West half of the Southeast quarter of Section Fourteen (14), Township Twenty-two (22) North, Range Thirteen (13) West, Willamette Meridian.

Louise Henry Peterson—The East half of the Southeast quarter of Section Twenty-three (23), Township Twenty-two (22) North, Range Thirteen (13) West, Willamette Meridian.

Mary Henry Hagen—The Southeast quarter of the Northeast quarter and the Northeast Quarter of the Southeast quarter of Section Twenty-nine (29), Township Twenty-two (22) North, Range Twelve (12) West, Williamette Meridian.

Chris Henry, Jr.,—The South half of the Southeast quarter of Section Ten (10), Township

Twenty-two (22) North, Range Thirteen (13) West, Williamette Meridian.

Christine Henry—The east half of the Southeast quarter of Section Thirteen (13), Township Twenty-two (22) North, Range Thirteen (13) West, Willamette Meridian.

June Henry—The North half of the Southwest quarter of Section Twenty (20), Township Twenty-two (22) North, Range Twelve (12) West, Willamette Meridian.

as allotments to be held and owned by said plaintiffs, in all respects as provided by law.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents, be and they are hereby ordered and directed to issue to said plaintiffs Agnes Rubens, Louise Henry Peterson, Mary Henry Hagen, Chris Henry, Jr., Christine Henry and June Henry, certificates of allotment of said lands heretofore described, said certificates of allotment to be in effect and to award to said plaintiffs all of the rights to which said plaintiffs are entitled under and by virtue of the laws of the United States.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers and agents and all persons claiming by, through or under them, be and they are hereby [273] forever barred and estopped from ever claiming or asserting that said plaintiffs, their heirs, executors, administrators and assigns are not entitled to said land as and for their allotment, with full right to use, build upon, clear, improve and occupy the same in all respects as pro-

vided by law; to all of which defendant excepts and its exception is allowed.

Done in open court this 24th day of December, A. D. 1928.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: O. K. as to form.

D. SPAULDING,
Asst. U. S. Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 24, 1928.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [274]

United States District Court, Western District of Washington, Southern Division.

No. 326-E

AGNES RUBENS, et al,
Plaintiffs,
vs.
THE UNITED STATES OF AMERICA,
Defendant.

ASSIGNMENTS OF ERROR

Comes now the above named defendant, the United States of America, by and through its attorneys, Anthony Savage, United States Attorney for the

Western District of Washington, and John T. McCutcheon and Tom DeWolfe, Assistant United States Attorneys for said District, and James T. Rahily, Associate Counsel, and respectfully submits the following Assignments of Error upon which it relies in support of its appeal from the judgment and decree entered on the 24th day of December, 1928, in said cause, in the District Court of the United States for the Southern Division of the Western District of Washington, and under which Assignments of Error said appellant seeks reversal of the decision, judgment and decree of said Court:

I.

That the District *Coyrt* erred in holding and finding that the lands selected for allotment by the plaintiffs were subject to selection and allotment under the laws of the United States, and that the plaintiffs are lawfully entitled to have such lands allotted to them.

II.

That the District Court erred in holding and finding that the officers and agents of the United States of [277] America have wrongfully failed, neglected and refused to allot the said lands to the said plaintiffs, or to issue to the plaintiffs any trust or fee patent therefor.

III.

That the District Court erred in adjudging that the plaintiffs were entitled to a decree adjudging and decreeing that the said plaintiffs are entitled to the lands selected for their allotments, and that the plain-

tiffs are entitled to have said lands allotted to them by the defendant, its officers and agents.

IV.

That the District Court erred in concluding, holding, and finding that the plaintiffs are entitled to a decree estopping the defendant, its officers and agents, from hereafter interfering with the plaintiffs in their rights to possession of said lands and their rights to improve the same, and estopping the defendant from hereafter claiming or asserting that said plaintiffs are not entitled to go upon, clear, improve, and build upon said lands.

V.

That the District Court erred in holding and finding that the general allotment statutes and acts do not apply and that the Act of March 4, 1911, is a special allotment act, when said Act of March 4, 1911, expressly provides that allotments are made under the provisions of the allotment laws of the United States.

VI.

That the District Court erred in holding and finding that the Indian tribes who refused to become parties to the Treaty of July 1, 1855, and January 23, 1856, were affiliated therein with the Indian tribes that did participate in said Treaty and actually agreed to the same and [278] signed the same.

VII.

That the District Court erred in holding and finding that the decision and action of the Indian Council of 1922 as to recognition and adoption of members

was in itself authoritative, notwithstanding the fact that said proceedings of said council were in no part approved by the Secretary of the Interior of the United States of America.

VIII.

That the District Court erred in holding and finding that under the Act of June 7, 1897, where an Indian woman who was recognized tribally at that time and married to a white husband has children, that the offspring of said children are entitled to receive allotments under the law.

IX.

That the District Court erred in holding and finding that the rights of children of a white man and an Indian woman in tribal property embraces the children of the mother who was living at the time of the passage of the Act of June 7, 1897, and was not then recognized by the tribe as one of its members.

X.

That the District Court erred in holding and finding that the plaintiffs and their parents had been properly adopted into the Quinaielt tribe by the adoption action of the Indian Council of said tribe of 1912 when said action was void for not having been approved by the Secretary of the Interior of the United States.

XI.

That the District Court erred in holding and finding that the plaintiffs who were born of a marriage prior [279] to 1897 between a white man and a

woman of Indian blood who was living on June 7, 1897, and not then recognized as a member of the tribal Indians of the Quinaielt Reservation, were entitled to allotments thereon.

XII.

That the District Court erred in entering decree herein on February 5, 1929, awarding allotments to the plaintiffs herein when the evidence adduced at the time of the trial herein was insufficient to sustain said decree and exceptions to said decree having been timely noted.

XIII.

That the District Court erred in holding and decreeing that the defendant, its officers and agents, are directed to issue to the plaintiffs, certificates of allotment of the lands claimed to be selected by said plaintiffs.

ANTHONY SAVAGE,
United States Attorney.

JOHN T. McCUTCHEON,
Assistant United States Attorney.

TOM DeWOLFE,
Assistant United States Attorney.

[Endorsed]: Received a copy of the within assignments this 19th day of March 1929.

STUART H. ELLIOTT,
and
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar. 20, 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [280]

United States District Court, Western District of Washington, Southern Division.

No. 326-E

AGNES RUBENS, et al,
Plaintiffs,
vs.
UNITED STATES OF AMERICA,
Defendants.

ORDER ALLOWING APPEAL.

On the application of the defendant herein, it is hereby Ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment and Decree heretofore entered and filed herein on the 24th day of December, 1928, be, and the same is hereby allowed.

It is further ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

DONE IN OPEN COURT this 20th day of March, 1929.

J. STANLEY WEBSTER,
Judge.

[Endorsed]: Received a copy of the within Order this 20th day of March 1929.

STUART H. ELLIOTT,
and
H. G. & DIX H. ROWLAND,
Attorney for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Mar. 20, 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [281]

United States District Court, Western District of Washington, Southern Division.

No. 229-E.

HILARY HALBERT, JR., et al,
Plaintiffs,
vs.
THE UNITED STATES OF AMERICA,
Defendant.

No. 300-E.

RICHARD HALBERT, etc.,
Plaintiff,
vs.
THE UNITED STATES OF AMERICA,
Defendant.

No. 301-E.

VERNON SIDNEY HALBERT, etc.,
Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

No. 302-E.

SIDNEY E. HALBERT, etc.,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

No. 306-E.

ARCHIE PELLARD,
Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

No. 307-E.

ROSE PEERS PICKERNOLL, et al,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

No. 309-E.

MARY FRANCIS PROVOE, et al,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

No. 312-E.

LULU M. ELLIOTT, et al,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
Defendant. [282]

No. 313-E.

BERTHA EVELYN PAYNE, etc.,
Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

No. 314-E.

LIZZIE ROLFSON, et al,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

No. 315-E.

VIRGINIA WALKOWSKY, et al,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

No. 320-E.

MARY BARICHIO PETIT, et al,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

No. 321-E.

DEWEY BARICHIO, et al,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

No. 324-E.

EDNA MAY ELLIOTT, et al,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

No. 325-E.

CHAS. G. ELLIOTT, JR., et al,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

No. 326-E.

AGNES RUBENS, et al,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

MEMORANDUM DECISION ON THE MERITS, AFTER TRIAL TO THE COURT.

Filed: Nov. 21, 1928. [283].

STUART H. ELLIOTT, Tacoma, Washington,

H. G. & DIX H. ROWLAND, Tacoma, Washington,
Solicitors for Plaintiffs,

THOS. P. REVELLE, former U. S. District Attorney, Seattle, BERTIL E. JOHNSON, former Asst. U. S. Dist. Attorney, Tacoma, ANTHONY SAVAGE, U. S. District Attorney, Seattle, Wash., DAVID SPAULDING, Asst. U. S. Dist. Attorney, Seattle, JOHN T. McCUTCHEON, Asst. U. S. Dist. Attorney, Tacoma, JAMES T. RAHILY, Associate Counsel, Washington, D. C.
Attorneys for Defendant.

CUSHMAN, District Judge.

Plaintiffs cite: Act of Congress, June 7, 1897 (30 St. L. 90); Oakes v. U. S., 172 Fed. 305; Wilson v. U. S. (This Court No. 218-E); Baker v. U. S. (This Court No. 250-E); Handbook of American Indians, Bureau of American Ethnology, Bulletin 30, Part I, page 569, "Hoquiam"; Life of Isaac I. Stevens, by Hazard Stevens, Vol. I, p. 451; Treaty of Medicine Creek (Kappler's Indian Affairs, Laws and Treaties, Vol. II, p. 661); Treaty with the Dwamish, Suquamish, etc., 1855 (Kappler's etc., Vol. II, page 669); Treaty with the S'Klallam, 1855 (Kappler's etc., Vol. II, page 674); Swan's Three Years at Shoalwater Bay, p. 337, 344, 346 to 350; General Allotment Act of February 8, 1887 (24 St. L. 380); Special Allotment Act, March 4, 1911 (36 St. L. 1345); Handbook of American Indians, Part II, page 388; Tommy Payne v. U. S. 264 U. S. 446; Executive Order of 1873; Opinion of the Solicitor of the Department of the Interior, dated September 2, 1916; Handbook of American Indians, Part II, p. 388; Bonifer v. Smith, 154 Fed. 889 and 166 Fed. 846; Leecy v. U. S. (C. C. A. 8th Circuit) 190 Fed. 289; appeal dismissed, 232 U. S. 731 (58 L. Ed. 818); Act of February 6, 1901 (31 St. L. 760); Sloan v. U. S. 118 Fed. 283, appeal dismissed, 193 U. S. 614 (48 L. Ed. 814); Morrison v. Work, 286 U. S. 481 (69 L. Ed. 394); [284] Hyyu-tse-mil-kier v. Smith, 119 Fed. 114 and 194 U. S. 401 (48 L. Ed. 1039); Waldron v. U. S. 143 Fed. 413; Sully v. U. S. 195 Fed. 133; Agnes Elliott, et al, v. U. S. (this court No. 272-E) decided May 21, 1926; Act of June 30, 1919 (41 St. L. 9); Pape v. U. S. 19 F (2d) 219; U. S. v. Higgins, 103 Fed. 348; Davidson v. Gibson, 56 Fed. 143; U. S. v. Work, 6 F

(2d) 694; Vezina v. U. S. 245 Fed. 411; Crichton v. Shelton, 33 Land Decisions 205; Addie Prickett, et al, 50 Land Decisions 554; Bisek v. Bellanger, 5 F (2d) 994; Garfield, Secty. v. U. S. Goldsby, 211 U. S. 249 (53 L. Ed. 168); Stark v. Mather, 12 A. D. 565; State v. Bachelder, 5 Minn. 223; Baggo v. Merced Mining Co., 14 Cal. 365; Sherman v. Buick, 93 U. S. 209; Smith v. Winton, 3 A. D. 755; Sharp v. Dittenthaler, U. S. C. C. 4 P. C. L. J. 31; Folk v. U. S., 233 Fed. 177; U. S. v. Bessie Wildcat, 244 U. S. 145 (61 L. Ed. 1033); State v. McDonald, 100 Wis. 8 (84 N. W. 171, 81 Am. St. Rep. 878); Ruling Case Law, Vol. 15, pp. 1007, 1008, Sec. 181 and 182; 9 Fed. Cases No. 5206-9030; Herman on Estoppel, p. 160, sec. 152, and Vol. I, p. 344; Act of June 14, 1862 (12 St. L. 427); R. S. Sec. 2119; William Banks case, 26 Land Decisions 71; Payne v. U. S. 264 U. S. 446; U. S. ex rel Besaw v. Work, 6 Fed. (2d) 695; Act of August 24, 1912 (37 St. 518-535, Sec. 19); Smith v. Bonifer, 166 Fed. 846; U. S. etc. v. McGowan, (This court No. 331-E); Montoya v. U. S. 180 U. S. 261 (45 L. Ed. 521); Equity Rule 30; Tim L. Driscoll v. U. S., 271-E (this court); Case F-275, U. S. C. C.; Intercourse Act of 1834; U. S. vs. 43 Cases of Brandy, 14 Fed. 539; 11 Fed. 47; Sec. 2140 Revised Statutes; Fowler v. U. S., 1 Wash. Terr. 3; Townsend v. U. S., 265 Fed. 519; U. S. v. Myers, 206 Fed. 387; Bates v. Clark, 95 U. S. 204; U. S. v. Martin, 14 Fed. 817; Hy-yu-tse-mil-kin v. Smith, 194 U. S. 401; Lemieux v. U. S., 15 Fed. (2d) 518; Act of August 15th, 1894, [285] (28 St. L. 305); Act of February 6, 1901, (31 St. L. 760); Allotment Act of 1885, Chap. 319, (23 St. L. 340); Cherokee Trust Funds, 117

U. S. 288; U. S. v. Clapox, 35 Fed. 575; Treaty of March 19, 1867 (16 St. L. 719); Allotment Act of January 14, 1889 (25 St. L. 642); Kendall v. Ewert, 259 U. S. 139; Sunderland v. U. S., 266 U. S. 226; La Roque v. U. S., 239 U. S. 66; Delaware Indians v. Cherokee Nations, 193 U. S. 127; Choctaw Nation v. U. S., 179 U. S. 494; Eastern Cherokees v. U. S., 45 Ct. Cl. 229; State v. Smokalem, 37 Wn. 91; Peter Hand Co. v. U. S., 2 Fed. (2d) 449; Swan v. Public Utilities, 298 Fed. 116; In re Southern Fruit & Produce, 14 Fed. (2d) 676; U. S. v. Work, 6 Fed. (2d) 694.

Defendant cites: Act of June 7, 1897 (30 St. 90); Oakes et al v. U. S., 172 Fed. 305; Act of February 8, 1887 (24 St. L. 390); William Banks case, 26 Land Decisions, Dept. of Interior, 71; Reynolds v. U. S., 205 U. S. 685; Act of March 3, 1875 (18 St. 420); Act of February 8, 1887 (24 St. 388); Act of August 8, 1888 (25 Stat. 392); Act of June 7, 1897 (30 Stat. 90); Pape v. U. S., 19 Fed. (2d) 219; Smith v. Bonifer, 154 Fed. 883; Medicine Creek Treaty, Dec. 26, 1854 (10 Stat. 1132); Executive Order Oct. 1, 1886 (Kappler, Indian Laws & Treaties, Vol. I (2d Ed) pp. 901 to 904; Executive Order of November 4, 1873; Act of March 4, 1911; Act of August 24, 1912 (37 Stat., 518-535); Opinion of Secretary of the Interior, September 29, 1926; L. C. 17201-26; Agnes Elliott, et al v. U. S., (This court No. 272-E, June 12, 1926); Montoya v. U. S., 180 U. S. 261 (45 L. Ed. 521); Executive Order of September 22, 1866 (Kappler, Laws & Treaties, Vol. I, 2d Ed. p. 924); U. S. v. 43 Cases Brandy, 14 Fed. 539; Treaty with the Omaha (10 Stat. 1043), Kappler, Vol. 2, 2d Ed.,

pp. 612, 613; Fowler v. U. S., 1 Wash. Terr. 3; Ruling Case Law, 14 p. 137; 4 U. S. St. at L. 729; Townsend v. U. S. [286] 265 Fed. 519; U. S. v. Myers, 206 Fed. 387 (124 CCA 269); Indian Intercourse Act, 1834, section 23 (4 Stat. 732); In re Carr, 5 Fed. Cases 115, 116; Bates v. Clark, 95 U. S. 204; U. S. ex rel Besaw v. Work, etc., 6 Fed. (2d) 694; Lemieux v. U. S. (U. S. C. C. A.) 15 Fed. (2d) 518; Cherokee Trust Funds, 117 U. S. 288; U. S. v. Clapox, 35 Fed. 575; Treaty of March 19, 1867 (16 Stat. 719); Act of January 14, 1889 (25 Stat. 642); Super v. Work, 3 Fed. (2d) 91; Lone Wolf v. Hitchcock, 187 U. S. 553; Kendall v. Ewert, 259 U. S. 139; U. S. Rev. Stat. Secs. 441, 463; Sunderland v. U. S., 266 U. S. 226; U. S. v. Hitchcock, 205 U. S. 80; U. S. ex rel. Detling v. Work, 18 Fed. (2d) 822; Act of March 3, 1871 (Rev. St. Sec. 2079); La Roque v. U. S., 239 U. S. 66; Bizek v. Bellanger, 5 Fed. (2d) 994; Kappler, Laws & Treaties, Vol. 3, pp. 572, 3, (38 Stat. 77, 88); Delaware Indians v. Cherokee Nations 193 U. S. 127; Choctaw Nation v. U. S., 179 U. S. 494; Eastern Cherokees v. U. S., 45 Ct. Cl. 229; State v. Emokalem, 37 Wash. 91; State v. Howard, 33 Wash. 250; State v. Williams, 13 Wash. 335.

Plaintiffs in these suits ask to have allotted them lands on the Quinaielt Indian Reservation. In each of these cases it is alleged plaintiffs are members of the Quinaielt Tribe of Indians. In cases 299-E, 300-E, 301-E and 302-E the Complaints allege that plaintiffs are Indians, which the defendant admits. In the remaining cases it is alleged by the plaintiffs that they are of part Indian blood. In each case the defendant

denies that plaintiffs are members of the Quinaielt Tribe of Indians.

It will be necessary to consider matters in these cases not discussed in former cases relating to allotments on the Quinaielt Indian Reservation. (Tommy Payne v. U. S., 264 U. S. 446 and 284 Fed. 826; John Mitchell et al, v. U. S. No. 242-E [287] this court; Ernest C. Wilson, et al v. U. S. No. 218-E this court; Ellen Baker, et al v. U. S. No. 250-E this court; Agnes Elliott, et al v. U. S. No. 272-E this court; Tim L. Driscoll, et al v. U. S. No. 271-E this court.)

Governor Stevens, Superintendent of Indian Affairs for Washington Territory, negotiated treaties with the Indian tribes of Upper Puget Sound by the Treaty of December 26, 1854, known as the Medicine Creek Treaty (10 Stat. 1132), Kappler, Vol. II, p. 665; with the tribes of Lower Puget Sound and those to the east of Admiralty Inlet, January 22, 1855, known as the Point Elliott Treaty (12 Stat. 927), Kappler, Vol. II, p. 669; with the tribes on the Straits of Juan De Fuca and Hood's Canal, at Point no Point, January 26, 1855 (12 Stat. 933), Kappler, Vol. II, p. 674; with the Makah tribe about Cape Flattery at Neah Bay, January 31, 1855 (12 Stat. 939), Kappler, Vol. II, p. 682.

In February, 1855, Governor Stevens undertook to make a treaty with the tribes of Southwest Washington. While a treaty was eventually made with the Quinaielt and Quillehute Indians, no separate treaty was made with the Quits and Hoh Indians between the Makah on the North and the Quillehutes on the South and none with the Chehalis, Cowlitz and

Chinooks. The final paragraph of the Quinaielt treaty is:

> "In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs, and the undersigned chiefs, headmen, and delegates of the aforesaid tribes and bands of Indians, have hereunto set their hands and seals, at Olympia, January 25, 1856, and on the Quinai-elt River, July 1, 1855."

The history of the main controversy arising in these cases, that is, whether members of the Chehalis, Cowlitz and Chinook bands and Shoalwater Bay settlements if the latter are to be considered as in any way distinguished from the Chinook and Chehalis, are entitled to allotments on the Qui- [288] naielt Indian reservation—may not be better shown than by the opinion of the Solicitor of the Department of the Interior on September 2, 1916, which is as follows:

* * * * * * * * * * *

> The Secretary of the Interior.
>
> Sir:
>
> My opinion is requested, upon recommendation of the Indian Office, concerning a large number of applications for enrollment and allotment with the Indians of Quinaielt Indian Reservation, Washington, transmitted by Thomas G. Bishop, President of the Northwestern Federation of American Indians.
>
> The applicants claim to belong to various tribes in northwestern Washington, more than 40 in

number, including the Chinooks, Clallams, Clatsops, Cowlitz, Dwamish, Quinaielt, Lummi, Muckleshoots, Nisquallys, Puyallups, Shoalwaters, Squaxon Island, Skokomish, and Swinomish. The question as to whether they are entitled to the rights sought is dependent upon the construction to be placed upon the treaty of July 1, 1855 and January 25, 1856 (12 Stat., 971), with the Quinaielt and Quillehute Indians, the Executive Order of November 4, 1873, setting apart the Quinaielt Indian Reservation, and the Act of March 4, 1911 (36 Stat., 1345), authorizing allotments on the Quinaielt Indian Reservation to Indians other than those parties to the treaty of 1855 and 1856.

By the above treaty the Indians ceded to the United States a vast tract of country, including nearly 100 miles of the Pacific Coast, extending approximately from a few miles south of Cape Flattery to a few miles north of Gray's Harbor, and back from the coast some 30 or 40 miles to the middle of the coast range of mountains. Article 2 reserved an area sufficient for their wants to be selected by the President and "surveyed or located and set apart for their exclusive use," to which they agreed to remove. Article 3 secured to them the right of taking fish at all usual and accustomed grounds and stations in common with the citizens of the Territory. Article 4 provided that the money paid for their lands should be applied "to the use and benefit of the said Indians under the direction of the President." Article 5 made an appropriation to enable

the Indians to remove to and settle upon the reservation to be selected for them and for other purposes. Article 6 provided that the President could at his discretion consolidate these Indians with other tribes and cause the whole or any part of the lands to be reserved under the treaty with such other lands as might be selected in lieu thereof to be surveyed into lots "and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable." [289]

In accordance with the provisions of the treaty a reservation was selected by the then Superintendent of Indian Affairs for Washington Territory and surveyed under contract, but as the same was too small to provide for the needs of the Indians, it was never formally set apart by Executive Order. The reservation selected was located on the Pacific Coast from about one-half mile north of the Quinaielt River to a point ten miles south of that river and about six miles back from the coast. In 1872 (?) (Question the Court's), the Superintendent of Indian Affairs for Washington Territory reported and recommended as follows:

All the tribes made parties to this treaty, together with the remnants of the Chehalis, Humptulups, Shoalwater Bay, and Chinook

tribes, residing along this coast south of the reservation to the mouth of the Columbia River, and the Makah tribe, residing at Cape Flattery, north, are emphatically fish-eaters, and draw their subsistence almost wholly from the water, and therefore have but little taste or desire for agricultural or land productions.

* * * * * * * * * *

As the land north and west of this reservation, for many miles, has no attractions for white settlers, and as the Quilliutes, Hohs, and Quits do not reside on the reservation, and refuse to come on to it as at present constituted, and as there is but a small amount of agricultural and pasture lands, on the reservation, I recommend that it be enlarged as follows: Commencing at the northwest corner of the reservation at tidewater, on the ocean-beach, thence north with the tidewater of said beach to half a mile north of the mouth of the Queetshee River, thence easterly with the course of said river three miles, thence southeasterly to the northwest point of Quinaielt Lake, thence easterly and southerly around the east shore of said lake to the most southerly end of the same, thence southwesterly in a direct line to the northeast corner of the present reservation. The reservation thus enlarged would afford two more fisheries on the Pacific coast, and perhaps several others around Lake Quinaielt,

and would afford occasional patches of agricultural and grazing lands, and upon it should be collected not only the three tribes named, but also all the other tribes and bands of fish-eating Indians on the Pacific coast, from the south side of Neah Bay reservation to the mouth of the Columbia River; all of whom could find room and homes on this enlarged reservation.

In view of this report, the Indian Office, on October 31, 1873, recommended the enlargement of the reservation selected by the Superintendent so that the "Hohs, Quits, and other fish-eating Indians residing upon the coast between the Quinaielt river and Makah Indian Reservation may be induced to go upon the reservation," and by Executive Order of November 4, 1873, under authority conferred on the President by Article 6 of the treaty of [290] 1855 and 1856, an enlarged reservation was set apart as follows:

In accordance with the provisions of the treaty with the Quinaielt and Quillehute Indians, concluded July 1, 1855, and January 25, 1856 (Stats. at Large, vol. 12, p. 971), and to provide for other Indians in that locality, it is hereby ordered that the following tract of country in Washington Territory (which tract includes the reserve selected by W. W. Miller, superintendent of Indian affairs for Washington Territory, and surveyed by A. C. Smith, under contract of September 16, 1861) be withdrawn from sale and set apart for the use of the Quinaielt,

Quillehute, Hoh, Quit, and other tribes of fish-eating Indians on the Pacific Coast, viz: Commencing on the Pacific coast at the southwest corner of the present reservation, as established by Mr. Smith in his survey under contract with Superintendent Miller, dated September 16, 1861; thence due east, and with the line of said survey, 5 miles to the southeast corner of said reserve thus established; thence in a direct line to the ma[illegible] southerly end of Quinaielt Lake; thence northerly around the east shore of said lake to the northwest point thereof; thence in a direct line to a point a half mile north of the Queetshee River and 3 miles above its mouth; thence with the course of said river to a point on the Pacific coast, at low water mark, a half mile above the mouth of said river; thence southerly, at low-water mark, along the Pacific to the place of beginning.

The Act of March 4, 1911, *supra*, provides:

That the Secretary of the Interior be, and is hereby, authorized and directed to make allotments on the Quinaielt Reserevation, Washington, under the provisions of the allotment laws of the United States, to all members of the Hoh, Quileute, Ozette or other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute tribes in the treaty of July first, eighteen hundred and fifty-five, and January twenty-third, (25th) (Court's correction) eighteen

hundred and fifty-six, and who may elect to take allotments on the Quinaielt Reservation rather than on the reservations set aside for these tribes;

Provided, That the allotments authorized herein shall be made from the surplus lands on the Quinaielt Reservation after the allotments to the Indians thereon have been completed.

No mention is made in the treaty of 1855 and 1856 of any tribe or bands of Indians as being allied or affiliated with the Quinaielts and Quileutes, but no doubt exists as to the right of the Indians of the particular tribes mentioned in the treaty, executive order, and allotment act to allotment on the Quinaielt Reservation. The question remains, however, as to just what bands or tribes may be entitled to enrollment and allotment with the Indians of that reservation under [291] the phrase, "other Indians in that locality"; "other tribes of fish-eating Indians of the Pacific Coast"; "other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute tribes in the treaty of July 1, 1855, and January 23, (25) (Court's correction) 1856."

The question has heretofore received consideration. In 1905, the Indian Office instructed the Special Alloting Agent in Washington with respect to allotments on the Quinaielt Reservation as follows:

An examination of the respective treaties and executive orders shows that a number of

> reservations have been created for Indians along the Pacific Coast and adjacent waters in the State of Washington, and presumably many, if not all of the Indians for whom such reservations have been created, are fish-eaters and would come within the terms of your instructions as to who are entitled to allotments on the Quinaielt Reservation if there were no other considerations, but it would seem to be the clear intent of the order and the several treaties to provide a reservation for the Quinaielt, Quileute, Hoh and Quit Indians and other fish-eaters who have no rights upon another reservation. Therefore, it would seem the proper course for you to pursue would be to recognize the rights of any member of a fish-eating tribe or band, who does not have rights upon some other reservation.

In 1906 the same allotting agent, in response to a question as to whether the Chinook Tribe of Indians should be classed as "fish-eating Indians of the Pacific Coast" was thus advised by the Indian Office:

> It is not believed that they should be classed as "fish-eaters" in the sense that will entitle them to allotment on the Quinaielt Indian Reservation. It is asserted that at one time they were all on the Siletz and Grande Ronde Indian Reservations.
>
> * * * * * * * * *
>
> For your purpose no Chinook should be

considered as a "fish-eater" unless he has affiliated with and been acknowledged to be a member of the band of Indians residing on the Quinaielt Indian Reservation.

During the same year the same allotting agent, in response to a request for the names of the tribes classified as fish-eating Indians of the Pacific Coast for guidance in making allotments on the Quinaielt reservation, was advised:

> That all the tribes and bands along the coast of the Pacific Ocean and the Sound are termed fish-eating Indians, but for your purpose only those Indians who have affiliations with and are recognized as members of the bands occupying the Quinaielt Reservation should be considered in making allotments and in addition such of them as may have left those bands and have not received allotments. [292]

The agent was also advised:

> No Hoh or Quileute Indian residing upon an Indian Reservation set apart for such Indian's use is entitled to an allotment on the Quinaielt Indian Reservation. * * * * But if members of the Quileute and Hoh tribes are affiliated with the Quinaielt Indians, and are not residents upon reservations set aside for their particular use, they are entitled to allotments with the Quinaielts.

This evidently had reference to the fact that regardless of the Executive Order of November 4,

1873, which specifically included the Quileutes and Hohs, separate reservations were set apart for the use and occupation of said Indians by Executive Orders of February 9, 1889, and September 11, 1893. In fact, specific reservations in addition to the Quileute and Hoh reservations were from time to time set apart by Executive Orders for the different tribes or bands of Indians in Washington Territory and State, including Chehalis, Lummi ("Dwamish and other allied tribes") Makah ("and other Indians"), Muckleshoots ("for the exclusive use of Indians in that locality"), Nisquallys ("for the Nisqually, Puyallup, and other bands"), Ozettes ("for the Ozette Indians not now residing upon any Indian reservation"), Shoalwater, Skokomish ("for the use of the S'Klallam Indians"), Swinomish, and Tulalip or Snohomish.

The Indian Office, on May 30, 1911, in response to an inquiry of the Superintendent of the Cushman School as to the scope of the Act of March 4, 1911, *supra,* said:

> The Office understands this legislation to permit of allotments within the Quinaielt Reservation, Washington, to all "fish eating Indians" of the Pacific Coast, who were affiliated with the Quinaielt Indians in the treaty of July 1, 1855, and January 23, (25) (Court's Correction) 1856 (12 Stats. L., 971). It appears from the records here that the Clallam Indians, the Squaxon Island, and others, as well as the Hohs, Ozettes and Quileutes were affiliated with the Quinaielts

in the treaty referred to, and hence unallotted members of these tribes are entitled to allotments within the Quinaielt Reservation.

And July 26, 1911, the Indian Office in a letter to George L. Houghton, an attorney at Thomas, Washington, said:

> The Act of March 4, 1911 (Public 486), authorizes allotments on the Quinaielt Reservation, Washington, to all members of the Hoh, Quileute, Ozette and other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute tribes in the treaty of July 1, 1855, and January 23, (25) (Court's correction) 1856, and who may elect to take allotments on the Quinaielt Reservation rather than on the reservations set aside for these tribes.
>
> The Act referred to was not enacted, however, with the view of giving each Indian in Washington who has not received land an allotment on the Qui- [293] naielt Reservation, but was recommended by the Department to provide allotments thereon for those Indians who were *affiliated* with the Quinaielt and Quileute Indians in the treaties named herein and who would have for that reason some equitable rights on the reservation. It is not believed that an Indian who has already received an allotment on Squaxon Island, should be permitted to change his lands for a more valuable allotment on the Quinaielt Reservation. There is also a serious question whether the Squaxon Island In-

dians are entitled to the benefit of the Act of March 4, 1911, for the reason that it does not appear that these Indians were affiliated with the Quinaielt and Quileute tribes in the treaty of July 1, 1855, and January 23, (25) (Court's correction) 1856.

August 23, 1911, the Indian Office issued instructions to the Superintendent of Cushman School, approved by the Department October 14, 1911, regarding enrollment and allotment on the Quinaielt Reservation. Among other things it was said:

> You should investigate and ascertain the names, etc., of all enrolled, non-allotted Indians of the bands and tribes within the purview of the act, supra, and submit a list or schedule thereof to the office with a full report and such recommendation as you may desire to make.
>
> Should there be Indians of any of the tribes or bands who were affiliated with the Quinaielt and Quileute tribes in the said treaty of 1855-1856, who are not *now enrolled* as belonging to any reservation, and desire to be enrolled and allotted with the Indians of the Quinaielt Reserve, you should aid them in submitting formal applications giving the facts in full as to their Indian blood, family history, residence up to the present time, and affiliation of the band or tribe to which they belonged with the Quinaielt and Quileute tribes at the time of the said treaty. Also you should

properly investigate their cases and obtain statements to be sworn to before you or a Notary Public from such of the relatives of the applicants as may have knowledge of the facts in their cases. The application should, following the usual method of procedure, then be submitted with all the evidence to the Tribal Council of the Indians of the Quinaielt Reservation in order that the members of the said Council may say what they know as to the facts in the case of the applicants and may express their views with reference to having them enrolled and allotted at the Quinaielt Reserve.

* * * * * * * * * *

Your report also should include a statement duly certified by you from the Chiefs and head men of the Quinaielt and Quileute tribes as to what bands and "other tribes of Indians in Washington were affiliated with them in the treaty of July 1, 1855, and January 23, (25) (Court's correction) 1856," and the location at that time of such bands and tribes. [294]

The Indian Office, after referring to the Executive Order of November 4, 1873, concurred in the opinion of the Superintendent that the Quinaielt reservation was set apart not only for the Quinaielt, Quileute and other Indians in that locality, but also for "all the other tribes and bands of fish-eating Indians on the Pacific coast from the south side of the Neah Bay reservation

to the mouth of the Columbia river," and that those for whom it was set aside and who have not already been provided by the Government with allotments and homes, should, if now entitled thereto, be allotted on the Quinaielt Reservation. The Superintendent was further advised:

> Any poor and homeless Indians, who do not fall within the provisions of either the said Act of Congress or Executive Order, who desire to cast their lot with the Indians of the reservation and establish homes thereon and become adopted into one of the tribes, should upon their request, be aided by you in making applications for enrollment *by adoption*, and their formal applications with supporting evidence should be submitted by you to the tribal council for its consideration and action. Of course, all such applicants should set out in their statements to be sworn to before you or a notary public, that they have not heretofore been provided for by the Government, have not received Fourth Section allotments and have no land on the public domain; that they desire to establish homes upon the Quinaielt Reservation and remain there; and in addition they should give the facts as to their parentage, Indian blood and where they have resided up to the present time.

In letter of the Department dated December 2, 1922, to George L. Houghton, it was said:

The Department is of the opinion that an Executive Order authorizing allotments on the Quinaielt Reservation to all Indians in Washington who have not received allotments and who were not affiliated with the Indians for whom that reservation was provided would not be applicable. It is believed that the claims of the fish-eating Indians generally in the State of Washington are fully protected so far as allotment rights on the Quinaielt Reservation are concerned, in cases where they can substantiate their claims, and that these claims will be presented in the course of time to the Indian Office for appropriate action thereon.

January 4, 1912, the Indian Office instructed the Superintendent of Cushman School as follows:

The Act of March 4, 1911 (36 Stats. L., 1345), authorizes allotments on the Quinaielt Reservation only to those members of the Hoh, Quileute, Ozette or other tribes of Indians in Washington, who were affiliated with the Quinaielt and Quileute tribes in the treaty of July 1, 1855, and January 26, (25) (Court's correction) 1856. The question of "affiliation" therefore, will be the one solely to be con- [295] sidered in determining the rights of enrolled members of other tribes who may apply for allotments on the Quinaielt Reservation.

* * * * * *

It may be said here, however, that the

records of the Office and the treaty with the Quinaielt and Quileute fail to show that any other tribes, bands or villages of Indians in Washington were affiliated with the Quinaielt and the Quileute in the treaty with these bands of 1855-1856. The statement from the chiefs and head men of the Quinaielt and Quileute, however, as to what tribes, bands or villages were affiliated with them in the treaty would have weight with the Office in determining the rights of such other tribes, bands or villages.

In letter of February 12, 1912, requesting instructions in the matter of making allotments on the Quinaielt Reservation, the Superintendent of Cushman School stated that he had sought such allotments for the fish-eating tribes on the Pacific Coast on the wording of Executive Order of November 4, 1873, which sets aside the Quinaielt reservation not only for the Quinaielt and Quileute tribes, but also for other tribes in that locality; that it was generally understood, when the Quinaielt reservation was set aside it was to provide for any and all Indians in Washington west of the Cascades, who had not been provided for in any other treaty.

Replying, under date of March 26, 1912, the Indian Office stated among other things:

> The right of the various bands of fish-eating Indians in Washington to take land on the Quinaielt reservation, except as set out in Office letter of Instructions to you

dated August 28, 1911, has been considered mainly from the standpoint of the authority contained in the Act of March 4, 1911, supra.

It is admitted that with the view to complying with the terms of the Treaty of 1855 and 1856 with the Quinaielt and Quileute Indians, a reservation was surveyed for these bands by A. C. Smith in 1863.

* * * * * * *

This tract was never specifically set aside by Executive Order, Executive Order of 1873, however, creating the Quinaielt reservation included the lands originally surveyed by A. C. Smith, the enlarged reservation being apparently to provide allotments for the Hohs, Quits, and other fish-eating Indians residing on the coast between the Quinaielt River and the Makoh (Makah) (Court's correction) Reservation. The Office does not believe, however, that the children of the various bands for whom reservations were established and allotted, born since allotments were made on the reservation, as, for instance, Tulalip, Puyallup, Nisqually, Lummi, Chehalis, etc., can be considered as being entitled to allotments on the Quinaielt reservation under authority of Executive Order [296] dated November 4, 1873; or that straggling bands or individual Indians, and their children, who have never lived on any reservation, are entitled to allotments on the Quinaielt reservation

merely upon application therefor; without the intention of going to the reservation and making permanent homes thereon.

* * * * * *

As it seems to be the general belief, from various correspondence received at this Office that all unallotted fish-eating Indians west of the Cascade Mountains, for whom no reservation was provided, are entitled, under the wording of Executive Order dated November 4, 1873, and the provisions of the Act of March 4, 1911, to allotments on the Quinaielt reservation, the Office deems it advisable to mention briefly the treaties with these Indians.

After referring to the provisions of the treaty of July 1, 1855, and January 25, 1856, with the Quinaielt and Quileute Indians, the treaty of Medicine Creek of December 26, 1854 (10 Stat., 1132), with the Puyallup, Nisqually, Squawkain, (Squawskin) (Court's correction) and other bands around the head of Puget Sound, the Treaty of Point no Point of January 26, 1855 (12 Stat., *93* 933), with the S'Kallams, Skokomish, and other tribes, the treaty of Point Elliott (12 Stat., 927), with the Lummi, Skokomish, and other tribes, the Indian Office said:

These treaties were made with four groups of tribes or bands, no one group apparently being affiliated with the other.

There would be no justice in permitting the children of the Indians whose reserva-

tion has already been allotted to take allotments on the Quinaielt reservation, unless it was with the consent of the Indians now having rights thereon. The various unattached or individual Indians not parties to any treaty may, however, as outlined in Office letter of instructions approved by the Department, submit their individual applications through you to the Quianielt tribe for enrollment therewith; and those enrolled members of the fish-eating tribes who were living when their reservations were allotted, but who did not receive lands, although entitled, are perhaps now entitled to allotments on the Quinaielt reservation without the formality of being enrolled at that reservation.

The Hoh Indians appear to have been affiliated with the Quinaielts and Quileutes (Bulletin 30, Handbook of American Indians, Bureau of Ethnology), although they were not actual parties to the treaty of July 1, 1855, and January 23, (25) (Court's correction) 1856. Unallotted members of this band may, therefore, be permitted to take allotments on the Quinaielt reservation under the provisions of the Act of March 4, 1911, supra.

The Ozettes, one of the several villages of the Makah, were parties to the treaty of Makah, dated January 31, 1855 (12 Stats. L., 939), and they would not be entitled to take allotments on the Quinaielt reserva-

tion under authority of the [297] Act of March 4, 1911. (?) (Question, the Court's) It may be, however, that they are entitled by reason of the wording of the Executive Order creating the Quinaielt reservation. At any rate, they may individually submit their applications through you to the council for enrollment with the Quinaielts.

In letter of April 5, 1912, to Representative William R. Humphrey, in regard to the rights of the Clallam Indians to take allotments on the Quinaielt reservation, the Indian Office said:

> The legislation contained in the Act of March 4, 1911 (36 Stats. L., 1345), was recommended by this Office with the view to allotting on the Quinaielt Reservation all Indians of the fish-eating tribes on the Pacific Coast, who were affiliated with the Quinaielt and Quileute tribes in the treaty of July 1, 1855, and January 25, 1856, and who failed to receive allotments when their tribes were given lands. The Clallams, or S'Klallams, however, were clearly not affiliated with the Quinaielts and Quileutes, but instead they were parties to the treaty of Point no Point, dated January 26, 1855 (12 Stats. L., 933). It appears, however, that very few, if any, of the S'Klallam Indians took land on the reservation set aside for them by Executive Order, dated February 25, 1874, based on the foregoing treaty, and that the lands reserved by the

said order were allotted almost entirely to the Skokomish, allotments to these Indians being completed in 1906.

As the S'Klallam Indians did not receive any benefit from the reservation established for them, based upon treaty, the Office believes that those members who are entitled should be aided so far as possible in obtaining lands on the Quinaielt Reservation.

In 1912, a bill was introduced in Congress amending the Act of March 4, 1911, and providing for allotments on the Quinaielt reservation "to the unallotted Indians of the Clallam, Cowlitz, Squaxon Island, Port Gamble, Hoh, Ozette, Quileute, and other fish-eating Indians of the State of Washington." This bill was not reported upon by the Department and did not become a law.

The question of the right of the Clallam Indians and other so-called "fish-eating Indians of the Pacific Coast" to allotments on *he* Quinaielt reservation without additional legislation was considered by the Indian office in letter to the Department of January 4, 1913. It was stated among other things in said letter as follows:

This office has been confronted with the necessity of determining from time to time the right of many so-called "fish-eating Indians" of the Pacific Coast to enrollment and allotment on the Quinaielt Reservation, Washington, particularly unallotted members of the Clallam, Cowlitz, Squaxon Is-

land and other "fish-eating" Indians, under the treaties, executive orders and acts of Congress hereinafter referred to. [298]

* * * * * * *

The expression "other tribes of fish-eating Indians on the Pacific Coast" renders it somewhat difficult to determine just who may be admitted to allotment rights on this reservation, but it would seem that after a careful examination of the various treaties and executive orders relating to the Indians in the State of Washington, it may safely be assumed that the intention of the Executive Order of November 4, 1873, was to provide a reservation on which all fish-eating Indians of the Pacific Coast not provided for elsewhere, could be given homes or allotments.

* * * * * * *

A letter from this Office, dated October 21, 1873, submitting to the Department the draft of the Executive Order subsequently signed by the President November 4, 1873, invited attention to a report from Superintendent Miller, dated September 16, 1861, (?) (Question, the Court's) in which he said that the Quileutes, Hohs and Quits did not reside on the reservation and had refused to remove thereto; that the enlarged reservation as recommended would afford two small fisheries on the Pacific Coast and several others around Lake Quinaielt and

upon it should be collected "not only the three tribes named, but also all the other tribes of fish-eating Indians on the Pacific Coast from the south side of the Neah Bay Reservation to the mouth of the Columbia River."

It would appear, therefore, that the intention, in making the enlargement of the Quinaielt Reservation, was to provide a body of land on which could be located the fish-eating Indians of the Pacific Coast not otherwise specifically provided for.

Prior to the passage of the Act of March 4, 1911 (36 Stats. L., 1345), this Office held that members of the Hoh, Ozette and Quileute Indians who were not residing on the Quinaielt Reservation and who were not affiliated with and recognized by that tribe as members, were not entitled to allotments on that reservation regardless of the provisions of the treaty of 1855-1856, supra, and the provisions of Executive Order of November 4, 1873. This holding now appears to have been founded on the assumption that the Hoh, Ozette and Quileute Indians had separate reservations provided for their tribe by distinct executive orders, separate and apart from that of November 4, 1873, and having separate reservations provided for their benefit, allotments to these Indians should be confined to such reservations, regardless of the provisions of the Executive Order of November 4, 1873.

Attention is invited here to the fact, however, that the reservation provided for the Quileute Indians by the Executive Order of February 19, 1889, embraces but 837 acres. The Hoh reservation created by Executive Order of September 11, 1893, embraces 640 acres. The Ozette Reservation, created by Executive Order of April 12, 1893, embraces a similar area. These Indians are fishermen rather [299] than agriculturists and to promote the fishing industry had congregated in villages at different points favorable to the pursuit of their chosen occupation. Undoubtedly, therefore, these small tracts of land were withdrawn, not as a reservation to provide for the tribe at large with a view of authorizing allotments thereof to the Indians, but simply to protect the Indians in the location of their homes in these village sites. This is clearly shown because the Quileute Reservation comprises but 837 acres, while the population on June 30, 1911, was given as 225 members—less than four acres per Indian. It would seem, therefore, that unquestionably a perusal of the Executive Order of November 4, 1873, enlarging what is now called the Quinaielt Reservation indicates that the intent of that Executive Order was to provide a reservation on which permanent homes could be given members of the "Quinaielt, Quileute, Hoh and Quit Indians," if not also, "other

tribes of fish-eating Indians on the Pacific Coast."

The Act of March 4, 1911, supra, authorizes and directs the Secretary to allot on the Quinaielt Reservation all members of the "Hoh, Quileute, Ozette or other tribes of Indians in Washington, who are affiliated with the Quinaielt and Quileute tribes in the treaty of July 1, 1855, and January 23, (25) (Court's correction) 1856." This, of course, removes any doubt as to the right of the Indians of the particular tribes mentioned to allotment on the Quinaielt Reservation, regardless of the fact that small separate reservations may have been made for these tribes by the executive orders hereinbefore referred to. It still leaves unsettled, however, the main question at issue and which is now before the Office, viz., the right of other fish-eating Indians on the Pacific Coast to allotment on the Quinaielt Reservation in view of the treaties referred to herein and the provisions of the Executive Order of November 4, 1873.

The question may be seriously considered at this time whether the Act of March 4, 1911, supra, was necessary. That is, whether authority did not already exist under the treaties mentioned and the Executive Order of November 4, 1873, to allot on the Quinaielt Reservation Indians of the tribes specifically mentioned in the Act of March 4, 1911. It is not seen, therefore, how this

act can be construed or regarded as in abrogation of or placing any limitation on the rights of various so-called fish-eating Indians of the Pacific Coast to allotments on the Quinaielt Reservation. The act should be read in conjunction with the prior treaties and the executive orders rather than using it as a basis for excluding from allotment on the Quinaielt Reservation members of the fish-eating tribes not specifically named in its provisions or who cannot be shown as clearly coming within the phrase "or other tribes of Indians in Washington, who are affiliated with the Quinaielt and Quileute tribes in the treaty of July 1, 1855, and January 23, (25) (Court's [300] correction) 1856."

* * * * * * *

House bill 22868, introduced April 4, 1912, but which has not yet been referred to the Department for report so far as this Office has been advised, is designed to authorize allotments on the Quinaielt Reservation to the unallotted Indians of the Clallam, Cowlitz, Squaxon Island, Port Gamble, Hoh, Ozette, Quileute and other fish-eating Indians in the State of Washington. In view of the treaties, executive orders and acts hereinbefore set forth, it is believed that the Indians referred to in the pending bill may be allotted on the

Quinaielt Reservation and that further legislation is unnecessary.

March 5, 1913, the Department concurred in the views expressed by the Indian Office that the unallotted Indians of the Clallam, Cowlitz, Squaxon Island, Port Gamble, and other fish-eating Indians of the Pacific coast are entitled to allotments on the Quinaielt reservation under existing laws.

In reply to an informal inquiry as to whether or not departmental approval of March 5, 1913, of Indian Office recommendation of January 4, 1913, authorized allotments on the Quinaielt reservation to members of the Tulalip tribe, the Indian Office, on March 19, 1913, advised that said recommendation was not with the view to permitting such allotments, and that the approval did not grant such authority. It was further stated:

> The Lummi, Snohomish or Tulalip Indians and other tribes under the Tulalip superintendency, were parties to the treaty of Point Elliott dated January 22, 1855 (12 Stat. L., 927). As the result of this treaty a reservation of sufficient size was set aside to provide for the Tulalips. Allotments were made some years ago to all Tulalips then entitled and the Office would not be justified in construing the approval of the Department to allot "fish-eating" Indians of the coast, as authorizing allotments on the Quinaielt Reservation to members of the

Tulalip tribe born since the reservation established for these Indians was allotted.

In Indian Office letter of May 5, 1913, to the Superintendent of the Cushman School, referring to letter of that office of January 4, 1913, approved by the Department March 5, 1913, and requesting rules to guide in determining eligibility of allotment on the Quinaielt reservation, it was said:

> It is clear from the said authority of the Department of March 5, 1913, that the Indians to be provided with homes on the Quinaielt Reservation are those unallotted individuals or members of the Clallam, Cowlitz, Squaxon Island, Port Gamble, Hoh, Ozette, Quileute and other "fish-eating Indians of the Pacific Coast." [301]
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> * * * * * *
>
> In this connection your attention is invited to Office letter of August 28, 1911, approved by the Department October 14, 1911, in which you were advised at length concerning the requirements in regard to enrolling Indians of the Hoh, Quileute, Ozette and other tribes in order that they might be provided with homes on the Quinaielt Reservation. The instructions in this letter should be followed so far as may be practicable in making the enrollment indicated.
>
> Of course those members of the tribes mentioned who have heretofore received allotments elsewhere are not to be included

in the enrollment which you are to make; and where homeless bands or individuals are found who are clearly entitled to allotments there, they should be induced, where practicable, to remove to the Quinaielt Reservation in order to make their homes on the lands to be allotted them.

April 4, 1914, the supervisor in charge of the Cushman School was authorized by the Indian Office to call a council for the purpose of aiding the Clallam Indians in applying for enrollment and allotment with the Indians of the Quinaielt reservation, and was at the same time advised as follows:

> It should be understood at this time, however, and all Indians interested should be advised accordingly, that under the provisions of the 6th article of the Treaty of July 1, 1855 (12 Stats., 971), only those members of the Clallam, Squixin (Squaxon) (Court's correction) Island, Port Gamble, and "other fish-eating Indians" of the Pacific Coast who actually remove to and establish homes on the Quinaielt Reservation, will be entitled to share in the benefits of that reservation, either land or money.

It will be observed that the matter submitted by the Indian Office herein is about as nearly covered by the instructions and correspondence of the Department and that office, extending over many years, as it is possible with any reasonable degree of certainty to cover the same in a for-

mal opinion in the absence of further legislation. There is apparently no valid reason for establishing at this time a different policy or mode of procedure from that heretofore pursued under such laws. It is a warrantable conclusion from the construction thus placed upon existing laws in said instructions that not all the Indians of western Washington are entitled to enrollment and allotment with the Indians of the Quinaielt reservation; that the term, "fish-eating Indians of the Pacific Coast," was not intended to include all tribes and bands west of the Cascade range, as has been contended, but applies only to those Indians of the Pacific Coast "south of Neah Bay or Makah reservation to the mouth of the Columbia River"; that only those Indians whose tribes or bands were parties to the treaty of 1855 and 1856, or are members of the tribes or bands named in Executive Order of November 4, 1873, and the Act of March 4, 1911, or are [302] found to be in affiliation with the Indians of Quinaielt reservation, and who have not received allotments on the reservations of their respective tribes or bands; and, furthermore, who remove to and take up their residence on said reservation as indicated by Article 6 of the treaty of 1855-1856, are entitled to enrollment and allotment on that reservation.

While the Quinaielt reservation is one of the largest west of the Cascade range, it was evidently not intended that all the unattached Indians as far east as that range could secure rights on that reservation. The more reasonable view

is that only the Indians of the tribes or bands on the immediate coast of Washington and those affiliated therewith were contemplated. The applicants represented by Mr. Bishop alone and belonging to more than 40 different tribes or bands are said to amount to more than 2000, and the number may reach 3000.

It may be stated here that the word, "affiliated," was apparently intended to refer to the tribe rather than to the individual. The individual Indians affiliated with the tribes on the Quinaielt reservation would have been entitled to allotment there without further legislation. Therefore, the Act of March 4, 1911, could not have been passed for the purpose of declaring rights already existing. The Hohs and Ozettes mentioned in the Act, as well as other tribes in western Washington, have specific reservations set apart for them, and the members thereof in taking allotments would be limited to those reservations but for the Act of 1911. The Indian tribes along the Pacific coast of Washington, described as "fish-eating Indians," are more or less affiliated, although divided into numerous tribes or bands.

It necessarily follows that in determining what Indians are entitled to rights on the Quinaielt reservation, a satisfactory showing must be made in the case of each individual applicant for enrollment and allotment, and that the requirements of such showing can very properly be governed by the same instructions contained in and that may be formulated in accord-

ance with the instructions and correspondence already had in the premises, and especially the instructions issued by the Indian Office to the Superintendent of Cushman School, which were approved by the Department October 14, 1911.

Respectfully,

ALEXANDER VOGELSANG,

Sep 12 1916 Solicitor."

It is clear that the words of the Executive Order of November 4, 1873, "to provide for other Indians in that locality" and "other tribes of fish-eating Indians on the Pacific Coast" and the words of the Act of March 4, 1911, "other tribes of Indians in Washington who are affiliated [303] with the Quinaielt and Quileute tribes in the treaty of July first, eighteen hundred and fifty-five, and January twenty-third, (twenty-fifth) (Court's correction) eighteen hundred and fifty-six," do not include Indians of the tribes on the Straits of Fuca, Admiralty Inlet or those on Upper or Lower Puget Sound, for while they may be "fish-eating Indians" they are not "fish-eating Indians of the Pacific Coast" nor "Indians in that locality" within the meaning of the Executive Order nor "affiliated with the Quinaielt and Quileute tribes in the treaty of July first, eighteen hundred and fifty-five, and January twenty-third," (Twenty-fifth) (Court's correction) "eighteen hundred and fifty-six" within the meaning of the Act of March 4, 1911. (John Mitchell et al., v. U. S., (No. 242-E, this court)).

Members of the Makah tribe, other than the

Ozettes, are not entitled to allotment for while they are "fish-eating Indians of the Pacific Coast" they were parties to the prior treaty of January 31, 1855 and therefore are not "Indians in that locality," within the meaning of the Executive Order, nor of "tribes * * * affiliated with the Quinaielt and Quileute tribes * * *" in the making of their treaty as provided in the Act of March 4, 1911. The Ozettes are only entitled to allotments because they are expressly named in the Act.

While the foregoing Indians are not entitled to allotments the question remains as to what Indians, other than the Quinaielts and Quillehutes, named in the treaty, are entitled thereto under the Executive Order and the Act of March 4, 1911.

The Court concludes that Indians of the Chehalis —Upper and Lower—, Chinook, Cowlitz and so-called "Shoalwater Bay" bands are entitled to allotments. [304]

It will be noted from the foregoing opinion of the Solicitor for the Department of the Interior that the Superintendent of Indian Affairs for Washington Territory in recommending the enlargement of the reservation described in the treaty said:

> "All the tribes made parties to this treaty, together with the remnants of the Chehalis, Humptulups, Shoalwater Bay, and Chinook tribes residing along this coast south of the reservation to the mouth of the Columbia River, and the Makah tribe, residing at Cape Flattery, north, are emphatically fish-e ters, and draw their subsistence almost wholly from the water,

and therefore have but little taste or desire to agricultural or land productions.

* * * * * * *

* * * * * *

"The reservation thus enlarged would afford two more fisheries on the Pacific Coast, and perhaps several others around Lake Quinaielt, and would afford occasional patches of agricultural and grazing lands, and upon it should be collected not only the three tribes named," (Quilliutes, Hohs, and Quits) "but also all the other tribes and bands of fish-eating Indians on the Pacific coast, from the south side of Neah Bay reservation to the mouth of the Columbia River; all of whom could find room and homes on this enlarged reservation."

The Indian Office did not adopt the recommendation of the Superintendent of Indian Affairs, "that on the enlarged reservation should be collected not only the Quilliutes, Hohs and Quits, but also all the other tribes and bands of fish-eating Indians on the Pacific Coast, from the south side of Neah Bay reservation to the mouth of the Columbia River" but instead recommended the enlargement of the reservation so that the "Hohs, Quits and other fish-eating Indians residing upon the coast between the Quinaielt river and Makah Indian reservation may be induced to go upon the reservation," nor did the Executive Order follow the recommendation of the Indian Office, nor did it, in exact language, follow that of the Superintendent of Indian Affairs for Washington Territory, but the order did enlarge the reser-

vation "to provide for other Indians" viz: other than Quinaielt and Quillehute, "in that locality" and the land [305] was thereby "ordered set apart for the use of the Quinaielt, Quillahute, Hoh, Quit, and other tribes of fish-eating Indians on the Pacific Coast."

The Act of March 4, 1911, in directing allotments, described, in still different language, the Indians to be allotted, as follows:

> "all members of the Hoh, Quileute, Ozette or other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute tribes in the treaty of July first, eighteen hundred and fifty-five, and January twenty-third," (twenty-fifth) (Court's correction) eighteen hundred and fifty-six."

It would appear, without other aid to interpretation than that afforded by the treaty, executive order, act of March 4, 1911, recommendation of the Superintendent of Indian Affairs for Washington Territory and the recommendation thereon of the Indian Office, that while the intent of the Executive Order and Act of 1911 may have been to include Indians in addition to those of the Chehalis, Cowlitz or Chinook, both contemplated allotments to members of such tribes, included in which would be the Indians of the Shoalwater Bay settlement.

In the case of Montoya v. United States, 180 U. S. 261, the court said: (page 266)

> "* * * We are more concerned in this case with the meaning of the words "tribe" and "band." By a "tribe" we understand a body of

> Indians of the same or a similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory; by a "band," a company of Indians not necessarily, though often of the same race or tribe, but united under the same leadership in a common design. While a "band" does not imply the separate racial origin characteristic of a tribe, of which it is usually an offshoot, it does imply a leadership and a concert of action. How large the company must be to constitute a "band" within the meaning of the act it is unnecessary to decide. It may be doubtful whether it requires more than independence of action, continuity of existence, a common leadership and concert of action."

The evidence in the present case indicates that the [306] Indians at Chinook, Dahlia, Shoalwater Bay and Oakville have no tribal organization. They are, as the witness Bush says of the Indians at Shoalwater Bay, "remnants of bands and tribes." The Superintendent of Indian Affairs for Washington Territory, in recommending the enlarged reservation, said: "all of the tribes made parties to this treaty, together with the remnants of the Chehalis, Humptulups, Shoalwater Bay and Chinook tribes, * * *." They still cling together at and about the old haunts of the former tribal organization and are therefore "tribes" within the meaning of the Executive Order and Act of March 4, 1911. In the Montoya case, supra, the tribal characteristic of one leadership of government and the band characteristic of one leadership in a common design or concerted action is

pointed out by the court. This characteristic in so far as the groups of Indians above-named in the present case, is, save as pointed out, wanting, as there is no tribal organization. But it should be borne in mind in considering the language of the court above quoted from the Montoya case, that the court was considering the question of tribal action or the action of a band as distinguished from the individual action of members of a tribe or band. To such action leadership would be essential. The court was not considering the question of surviving membership in a vanishing tribe.

The present is not a case under the General Allotment Act. It is a case arising under a special allotment act, that of March 4, 1911, and the Executive Order of November 4, 1873, applicable to particular Indians shown to be and have been without tribal organization, which fact it must be inferred was considered in making the Executive Order, for that order was made upon the recommendation of the Superintendent of Indian Affairs for Washington Territory, a part [307] of which recommendation recited not that these were members of organized bands or tribes but that they were the "remnants" of tribes. The Indian Office has evidently recognized that something more than organized tribes with a governmental leadership was contemplated. This is indicated in a portion of the letter of January 4th, 1912 quoted by the Solicitor:

> "The statement from the chiefs and head men of the Quinaielt and Quileute, however, as to what tribes, bands or *villages* were affiliated with them in the treaty would have weight with the

> Office in determining the rights of such other tribes, bands or villages." (Italics the court's)

It is apparent difficulty has been experienced in determining the meaning of the words of the Act of March 4, 1911:

> "Other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute tribes in the treaty of July first, eighteen hundred and fifty-five, and January twenty-third," (twenty-fifth) (Court's Correction) eighteen hundred and fifty-six."

It is not unlikely that the words "in Washington" were inserted because of the Chinook, who, while they "claimed the territory on the north side of the Columbia River from the mouth to Grays bay, a distance of about fifteen miles, and north along the seacoast as far as the northern part of Shoalwater Bay," (Handbook of American Indians, Bureau of American Ethnology, Bulletin 30, Part I, page 272) yet it would appear from the Solicitor's opinion that certain of the Chinooks may have lived in Oregon as the Indian Office in 1906 questioned the right of the Chinooks to allotments on the Quinaielt reservation in part because:

> "it is asserted that at one time they" (Chinooks) "were all on the Silotz" (Siletz) "and Grande Ronde Indian Reservations."
>
> (Brackets the Court's)

The words, "fish-eating Indians of the Pacific Coast," were probably omitted from the Act of March 4, 1911, because [308] of the contention that the

Cowlitz and Upper Chehalis, while "fish-eating Indians," not being directly upon the coast, were, therefore, not "fish-eating Indians of the Pacific Coast."

The Act of March 4, 1911 instead of these words used the expression "other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute tribes in the treaty of July first, eighteen hundred and fifty-five, and January twenty-third," (twenty-fifth) (Court's correction) "eighteen hundred and fifty-six." It will be noted that the word used is "are" and not "were," yet the Indian Office has construed the word as "were," which is shown by the Opinion of the Solicitor in setting out the instructions of August 23, 1911, approved by the Department October 14, 1911, and the instructions from the Indian Office to the Superintendent of Cushman School on January 4, 1912. This construction is doubtless proper. (Words & Phrases, 1st Series, "are" citing Barzizias v. Hopkins & Hodgson, (Va) 2 Rand. 276, 293)

Trouble appears to have been experienced in construing and applying the word "affiliated" as it is used in that part of the Act of March 4, 1911, reading as follows:

> "* * * to all members of the * * * or other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute tribes in the treaty * * *"

There were no Indians, other than the Quinaielts and Quillehutes, actually signing the treaty on the Quinaielt River July 1, 1855, negotiations for which had been held on the Chehalis River in February of

that year. The last signor, Hay-et-lite-'l, or John, may have been a Chehalis. The testimony is that he was a Gray's Harbor Indian. The fact, while it may show that the lines separating these bands or tribes were not distinct, is otherwise of no aid in determining the question presented. [309]

Mr. Swan, who was present on the treaty ground upon the Chehalis in February, 1855, says in his book, "The Northwest Coast; or, Three Years' Residence in Washington Territory," published in 1857, Chapter XIX, page 346:

> "The whole together only numbered 843 all told, as may be seen by the following census, which was taken on the ground:
>
> | | |
> |---|---|
> | Lower Chehalis | 217 |
> | Upper do | 216 |
> | Queniults | 158 |
> | Chenooks | 112 |
> | Cowlitz | 140 |
> | | 843"

Again he says, at page 337:

> "Around the sides of the square were ranged the tents and wigwams of the Indians, each tribe having a space allotted to it. The Coast Indians were placed at the lower part of the camp; first the Chenooks, then the Chehalis, Queniult and Quaitso, Satsop or Satchap, Upper Chehalis, and Cowlitz"